

THE AMERICAN LABOR MOVEMENT

Y 4. L 11/4: S. Hrg. 103-622

The American Labor Movement, S. Hrg.

HEARING

BEFORE THE
SUBCOMMITTEE ON
EMPLOYMENT AND PRODUCTIVITY
OF THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

EXAMINING WHERE THE UNITED STATES IS IN TERMS OF LABOR/
MANAGEMENT RELATIONS AND PARTICULARLY, LABOR MEMBERSHIP

MARCH 20, 1993 (CHICAGO, IL)

Printed for the use of the Committee on Labor and Human Resources

RECEIVED BY THE U.S. GOVERNMENT PRINTING OFFICE
MARCH 20 1993



U.S. GOVERNMENT PRINTING OFFICE

81-347 CC

WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-044663-5

THE AMERICAN LABOR MOVEMENT

11/4: S. HRG. 103-622

can Labor Movement, S.Hrg....

HEARING
BEFORE THE
SUBCOMMITTEE ON
EMPLOYMENT AND PRODUCTIVITY
OF THE
COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

ON
EXAMINING WHERE THE UNITED STATES IS IN TERMS OF LABOR/
MANAGEMENT RELATIONS AND PARTICULARLY, LABOR MEMBERSHIP

MARCH 20, 1993 (CHICAGO, IL)

Printed for the use of the Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C.



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE

81-347 CC

WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-044663-5

COMMITTEE ON LABOR AND HUMAN RESOURCES

EDWARD M. KENNEDY, *Massachusetts, Chairman*

CLAIBORNE FELL, *Rhode Island*
HOWARD M. METZENBAUM, *Ohio*
CHRISTOPHER J. DODD, *Connecticut*
PAUL SIMON, *Illinois*
TOM HARKIN, *Iowa*
BARBARA A. MIKULSKI, *Maryland*
JEFF BINGAMAN, *New Mexico*
PAUL D. WELLSTONE, *Minnesota*
HARRIS WOFFORD, *Pennsylvania*

NANCY LANDON KASSEBAUM, *Kansas*
JAMES M. JEFFORDS, *Vermont*
DAN COATS, *Indiana*
JUDD GREGG, *New Hampshire*
STROM THURMOND, *South Carolina*
ORRIN G. HATCH, *Utah*
DAVE DURENBERGER, *Minnesota*

NICK LITTLEFIELD, *Staff Director and Chief Counsel*

SUBAN K. HATTAN, *Minority Staff Director*

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

PAUL SIMON, *Illinois, Chairman*

TOM HARKIN, *Iowa*
BARBARA A. MIKULSKI, *Maryland*
JEFF BINGAMAN, *New Mexico*
HARRIS WOFFORD, *Pennsylvania*
EDWARD M. KENNEDY, *Massachusetts*
(*Ex Officio*)

STROM THURMOND, *South Carolina*
DAN COATS, *Indiana*
JUDD GREGG, *New Hampshire*
ORRIN G. HATCH, *Utah*
NANCY LANDON KASSEBAUM, *Kansas*
(*Ex Officio*)

BRIAN KENNEDY, *Chief Counsel and Staff Director*

TODD ATWATER, *Minority Counsel*

C O N T E N T S

STATEMENTS

SATURDAY, MARCH 20, 1993

	Page
Walsh, Richard, president, Illinois State AFL-CIO; Tom Geoghegan, attorney-at-law; Don Turner, president's assistant, Chicago AFL-CIO; and Michael Breslin, Chicago Building Trades	2
Prepared statements of:	
Tom Geoghegan	10
Don Turner	20
Jones, Kay, associate administrator, Illinois Nurses Association; Eugene Moats, president, Service Employees International Union, local 25, AFL-CIO, CLC; and Barbara Howard and Ivory Norman, former building service workers, Kluczynski Federal Building	33
Nagle, Juanita, cleaning worker, prepared statement	44
Jackson, Sally A., president and CEO, Illinois State Chamber of Commerce; accompanied by James Baird, attorney-at-law, and Brian Bulger, attorney-at-law	45
Prepared statement	56

THE AMERICAN LABOR MOVEMENT

SATURDAY, MARCH 20, 1993

U.S. SENATE,
SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY, OF THE
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Chicago, IL.

The subcommittee met, pursuant to notice at 10:00 a.m., at DePaul University, in 342 Lewis Center Lecture Hall, 25 East Jackson Boulevard, Chicago, IL, Senator Paul Simon, (chairman of the subcommittee) presiding.

Present: Senator Simon.

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. The subcommittee hearing will come to order. This is a second in a series of hearings taking a look at where we are in the United States in terms of labor/management relations and particularly, labor membership.

If you take a look at Canada, Western Europe, Japan, you see a much higher percentage of working men and women organized than here in the United States of America. There has been a decline for a variety of reasons. We're now—compared to Canada, where you have about 35 percent of workers organized, for example, Western Europe, 40 percent and higher. We're down to 16 percent and if you exclude the governmental employees, we're down to about 12 percent. That is not good for business. It is not good for our country. I say it's not good for business because studies show very clearly the satisfied workers are more productive workers and studies show also very clearly that union workers tend to be more satisfied workers. So that union membership, in fact, adds to productivity in the country, in addition to safety factors and other things like that.

There is also the impact that this has on where the country goes and that is also a concern of mine. As you look at the progress that we have made over the years, in having a Social Security, having minimum wage, having child labor laws, labor unions really led the way on that. And as you have a diminished voice for labor unions, you have a diminished voice for things that are important to our country. There is no question in my mind that if we had 40 percent or 35 percent of workers in our country organized that we would have a healthier program in place. We wouldn't be talking now about what we're going to do and I could give you other illustrations of that.

How do we get there? How do we improve the situation? I've had a breakfast with Bob Reich, the new Secretary of Labor, talking

about some possibilities. One of them, I remember reading in Tom Gaykins' (phonetic) book. It was the simple reality that in Canada, for example, when a majority workers sign up on a card, you organize whatever the plant or industry is. In the United States, we have instances where there has been an election to organize and it has been brought into the courts and it has been dragging out 7 years.

What are some practical things that we can do that do not discourage a good labor/management relationship, but at the same encourage, what I think is desirable in our country, a higher percentage of working men and women to be members of labor unions. Anyway, that's the focus of these hearings and we appreciate having the witnesses here today.

Let me, before I get into hearing the witnesses and we will enter your full statements in the record and if you can summarize in, roughly, five minutes so we can get into questions and discussion, I would appreciate it.

I learned just a few minutes ago, that last night, Emmet O'Neill died. Emmet O'Neill was Alan Dixon's head of his office here, but not only helped Alan Dixon, he helped Paul Simon. He helped anybody else who needed help. Emmet O'Neill was just an uncommonly fine human being and his loss is a very real loss, not only to his family and to his friends but to everyone that he helped. I might add he not only helped Senator Alan Dixon, he stayed on and has been on the staff of Senator Carol Mosley Braun and has been of great help to Senator Mosley Braun, also.

Senator SIMON. Our first witnesses are Richard Walsh, the president of the State AFL-CIO and I knew him long before he emerged into that kind of a high title. Tom Geoghegan, an attorney and author and I hate to say it, I can't remember the book, after having praised it now. What is the name of your book?

Mr. GEOGHEGAN. Which Side Are You On, Senator.

Senator SIMON. Which Side Are You On, published about 2 years ago?

Mr. GEOGHEGAN. A year and a half ago.

Senator SIMON. A year and a half ago. An excellent discussion of where we are in this country. Don Turner, the assistant to the president of the Chicago AFL-CIO and Mike Breslin, may be joining us here shortly, from the Chicago Building Trades and unless there is any preference on your part, I will start with Rich Walsh.

STATEMENTS OF RICHARD WALSH, PRESIDENT, ILLINOIS STATE AFL-CIO; TOM GEOGHEGAN, ATTORNEY AT LAW; DON TURNER, PRESIDENT'S ASSISTANT, CHICAGO AFL-CIO; AND MICHAEL BRESLIN, CHICAGO BUILDING TRADES

Mr. WALSH. Thank you very much, Senator, and thank you for having this important hearing in Chicago. I share with you the sadness about Emmet O'Neill. He was a good friend to the State federations, too, in our legislative and political efforts over my tenure with the AFL-CIO, the last 15 years, and I'm sorry to hear that.

This hearing really could not have come at a better time with the campaign for President last fall and now in the continued statements of the President, it is clear that he is concerned about our

declining standard of living and about the decline of the middle class and of our competitive edge with relationship to our other industrial nations and, I think, that you can tie those declines directly to what you mentioned in the beginning and that is to the decline of union membership in this country.

It was a delight at the AFL-CIO council meeting a couple of weeks ago to have met and talked to the new Secretary of Labor Reich and while we were delighted that your reelection victory in 1990, it had some consequences for us at the Department of Labor and they were not good consequences during those 2 years. It was fascinating to listen to him talk about the importance of workers and front line workers in our economy and our future of having a competitive economy in the future, the importance of workers and the choice between whether we choose to deal with high skills or low wages, the importance of unions as the voicing, if I can use the word, the only voice of American workers in that struggle for competitive advantage. And, Senator Simon, he sort of followed your lead in that press conference, too, by announcing that he was going to appoint a blue ribbon panel in the very near future, I guess, to take a look at all aspects of our labor relations and labor law policies and to make recommendations in the near future.

The labor/management climate is critical to our future economic picture and you have already heard in your hearings in Washington, articulate presentations of the problems with our nations labor laws and labor relation laws and let me just mention a few that clearly something needs to be dealt with about. No. 1, and that's the ability of employers to permanently replace employees so that instead of having the right to strike, you really have under the current policy, a right to be replaced taking away the right to strike.

The difficulty, number two, in getting fair and free representation elections, and the often frequent threats and coercion that take place in representation elections, that make it very difficult for employees who want to have a union, to be able to continue to make that choice without fear of their being fired.

The enormous delays that take place in representation elections and determination of bargaining units causes, also causes difficulty. In many instances, the representation election itself turns into a life and death struggle between the employer and those who want to become part of the labor union and whether you win or lose, the enterprise loses because of the attitude that's left after such a struggle takes place. It leaves consequences in every single plant where that has happened. The increase in the strategy of employers firing employees for exercising their rights and either threatening to fire or actually fire an employees who are trying to organize.

The endless legal delays in getting election and discharge decisions from the NLRB, which as you indicated, in some cases takes 7 years to get a decision and in many instances, justice denied, or justice delayed is justice denied and having waited 7 years, it's difficult to maintain and organize a campaign under those circumstances.

No. 5, no meaningful sanctions after delays to stop employers from breaking the law, either in relationship to coercion or dis-

charge or any other myriad of legal mechanism that exist to stop the labor relations policies of this Nation from being implemented.

The solution to some of these problems, I think, some were articulated at your meeting in Washington. The first is a clean up measure as we have to pass anti-strike legislation and have it signed. Thank goodness, now, we have a President who says he is willing to sign a piece of legislation. That, in itself, will level the playing field between employers and employees in this circumstance and will once again guaranty the right that some one has to have a union and have the right to strike.

We've got to stop the threats and coercion that take place in union organizing drives, by allowing employers, employees, free exercise they're supposed to have, to chose whether they want to be represented or not. We need to change the election procedures and you've mentioned already, some of the mechanisms that have been used in other countries, that allow the decision to be made more quickly or with a lot less administrative difficulties. One clear common sense thing is if someone is willing to sign a union card, why do they then have to go through another procedure to show that they want to have a union. Some countries actually provide for representation among those who want to be part of the union, whether they're a majority or not. And we need to cut the delays, too, because the delays themselves provide a mechanism for stopping an organizing drive just because of the delay itself and the opportunity during that delay for the employer to take actions that threaten the workers and their jobs.

Some have suggested and it might make sense that in first contract situations, there ought to be some kind of arbitration. After an organizing campaign, sometimes in many instances, the first contract is never reached. In fact, I've seen estimates that 40 percent of those that win elections, never really get the benefit of collective bargaining agreement because the employers refuse to bargain in good faith and it never ends up in a contract.

You had been in a situation just like that recently in Joliet, where 600 nurses with the new health care rules, organized the unit in a Catholic hospital in Joliet and a year later, are still trying to bargain their contract. They offered weeks ago, in fact, the day before you left there——

Senator SIMON. If I may interrupt, I want to say it was settled as of 2 days ago.

Mr. WALSH. Right. Well, I talked to Alecia last night and she said that the hospital board had accepted the contract and the union was in the ratification procedure yesterday and today, I think. So, that's a happy procedure at the end, but it's been a long, long struggle and it took the kind of political help that you gave to try to resolve it. Months ago, the nurses offered the possibility of arbitration for this first contract and that would have resolved the thing in a much more—and again, the consequences of having these kinds of fights, whether they be about elections or they be about first contracts, are enormous when it comes to labor/management relationships that exist in that entity immediately thereafter and you've got to take giant steps to eliminate the hostility that each party has felt toward the other in the process and that can't be good for productivity or for anything. So, first the opportunity,

some countries have arbitration in the first contract situation and that helps.

We need to speed up the investigations of representation elections and discharge motions to try to cut down on the amount of time it takes to get resolution of issues before the National Labor Relations Board and as part of that, impose stiff meaningful penalties on employers who break the law. Right now, under the National Labor Relations Act, not only do they have to wait a long, long time, but in many instances, the fine or penalty is just short of a slap on the wrist and that has no deterrent effect about those kinds of policies in that past. Hopefully, we now have an administration who believes in the implementation of labor relations policies of the State and that the employer may not get that same message, but some law changes and some appointments to the National Labor Relations Board would be necessary in order to really implement pro-employee choice in labor relations situations.

Again, if we're going to keep our standard of living and increase our standard of living, help the middle class, and improve our ability to compete in the future, the best way to do that is through union membership. And to recognize the value, as I think our Secretary Reich does, of the front line worker and of the harmonious and cooperative relationships that can exist between labor and management and have shown to exist in other countries where the union membership is much more significant. That's the way to improve our economy and to improve the welfare of working men and women in this country.

Again, I applaud you for holding this hearing and we pledge to you our every effort to make sure that the results of the hearing are implemented through legislative and public action through the Administration.

Thank you, very much, for the opportunity to be here.

Senator SIMON. I thank you.

Mr. Geoghegan.

Mr. GEOGHEGAN. Thank you, Senator.

I agree with everything that Rich says, but I am worried, maybe even skeptical, that the worker replacement bill will pass. If you look at history in this country, in 1978, the Labor Law Reform Bill, that went through the House and the Senate, didn't get through the Senate. We couldn't even get that modest reform through when we had a democratic President, democratic House, Democratic Senate.

I think that we ought to rethink our strategy a little.

In fact, I know that many in the AFL-CIO, and not just middle level people but even presidents of unions, have some skepticism about the wisdom of pushing worker replacement as the main initiative.

I think that we have to re-conceptualize this whole approach toward labor law reform and I think your hearings have been one step toward that. You've had an excellent list of witnesses so far as I can tell from my reading and inquiry into this.

Let me make a couple of suggestions, quickly, as to a different approach toward it. First, I think that we have to drag people like Ira Magazina (phonetic) off of health care reform, as important as that is, and set up a commission that explains to people, fun-

damentally, the stake in labor law reform. The fact that labor law is not just reform. It's not just a payoff for a special interest group, but it's something that we all have a stake in.

As you're very much aware, if we had a unionized economy, we'd be much better able to stimulate demand in this country. We'd have some sort of structure for pushing up wages. The way to create high wage jobs is to increase the wages on the jobs people already have. We would make the economy more capital intensive. That is exactly what the unionized economies of northern Europe are able to do. We would be more productive with a unionized economy than without one for a variety of reasons. Some of which are laid out in the Magazina report, that Rich was referring to, High Wages Versus Low Skills and others have been developed by other economists.

Germany is supposed to be President Clinton's favorite economy. What is the most fundamental external difference between the German economy and ours? The fact that over 40 percent of the German work force are unions and they negotiate wage agreements that cover over 90 percent of the German workers. In this country, as you pointed out in the private sector, it's 11.5 percent and dropping. That is one of the fundamental reasons why the German economy has been able to keep a manufacturing sector, because the high wage level in Germany punishes investment in low wage labor intensive sorts of industries and rewards investment in high wage capital intensive industries. The same is true for the Netherlands, Scandinavia, etc.

Not only that, high wages create a different kind of demand. It stimulates higher quality production. You know, over in Europe they want cappuccino machines with computers because people have the money to afford that. Over here, with the policy pushing wages down, which we've literally had for years, we create a K-mart economy for K-mart workers at K-mart prices and we open ourselves up to competition from China, the Philippines, Mexico, because in the end those countries are better able to supply a mass low wage market than our own economy is.

If we want to be competitive, in the new world economy, we've got to push wages up here, and one of the ironies that is lost upon Americans, because we, those of us who support labor, haven't gotten the message across is that, if anything, we've lost our manufacturing sector, not because our wages were too high, but because they were too low. That's why we've had investment for years with high capital costs and falling labor costs flowing into labor intensive, a McDonalds type economy. We punish investment in capital intensive things here and we reward it in low wage labor intensive types of businesses.

We also don't have a social contract here within each firm the way the Europeans do. They are much less likely to export their jobs than we are, because there is not a worker's republic, but in a way, kind of a half a worker's republic in all of these companies. There are stakes in which the working people have stakes in them. They have works councils in Germany, in the Netherlands, etc. This has a real effect on exporting jobs overseas.

There's an article in Wall Street Journal, last week, which points out that even high wage jobs, jobs by engineers, etc, are being ex-

ported overseas now. And this raises a serious question about Mr. Reich's strategy about using job training alone as a way of improving American economy. Even these highly trained jobs are going to be exported overseas. So what's the answer?

I think the answer is to come forward with a different kind of labor law reform. The first thing, I'd like to see labor do is, first have this commission, present what the stake is to people and then try to present labor as a civil rights issue. And my suggestion is that we think about amending the current 1991 Civil Rights Act and provide that the right to join a union is a right that is protected by that Act, just as the right not to be discriminated against on the basis of race or age or sex. You can't be discriminated against on the basis of union membership. That civil rights law with its new enforcement mechanism would be an excellent approach for doing the sorts of things that—some of the sorts of things that Rich Walsh was talking about doing here. Except, you could go directly into court. There would be legal fees. There would be punitive damages. I laid out in this statement exactly why I think this is a very good approach.

It also does something else. It explains to the American public, that the right to join a union is a civil right. One of the things about labor laws that I've found in dealing with my friends is that it's a very opaque subject to most Americans. They don't understand rights that run to organizations and labor law came out of the 1930's when we thought in collective as terms, which as Americans, we instinctively do not.

If we presented this as a civil rights issue and used the civil rights laws and brought in the lawyers that enforce those civil rights laws as a way of getting employers to protect the right—respect the right of people to put on a union button and say look, I'm for the union. If we presented this not as an issue of the right to strike, the way the worker replacement issue does, but as the right to vote, the right to go into your work place and say hey, I'd like to join a union, I think that is instinctively more appealing to most Americans and it also is a bill that would address itself more directly to the 90 percent of those in the private sector who are not in a union at all and have no realistic chance, right now, of getting into one.

That's legislation. I understand how difficult it is to get any legislation through. The 1978 Labor Law Reform Bill, which got massacred in the Senate is a cautionary example here. One way in which your committee could be very helpful, Senator, is if you went to President Clinton and Reich and put pressure upon them to do a whole series of things that they could right now by rule making and maybe to make it more affective, it all ought to be done at once.

Here are a couple of examples. Maybe a set of Clinton Reich Simon principles that would be put into affect. First,—

Senator SIMON. I like the combination.

Mr. GEOGHEGAN. First, the appointment of the General Counsel who is going to go in routinely, automatically, for Section 10J injunctions, whenever there are violations of the labor laws by employers. Now, the General Counsel has the power to do that right now, but he doesn't because he doesn't have lawyers, because

unions don't ask enough and because this policy has never been articulated.

Senator SIMON. So, as I understand you, the General Counsel for whom?

Mr. GEOGHEGAN. The National Labor Relations Board.

Senator SIMON. OK.

Mr. GEOGHEGAN. When, let me give you an example. You're organizing at a plant. Two or three employees suddenly lose their jobs. The General Counsel could go in immediately for preliminary injunction. He never does. He never does, because it's hard. It's difficult, etc. If there is a secondary boycott, the General Counsel is under a mandate under Federal law to go in for preliminary injunction to stop the secondary strike.

Mr. WALSH. And he does.

Mr. GEOGHEGAN. And does. Why not have the same policy here. And part of that policy would be, first of all, you've got to get a General Counsel who would commit himself or herself to that policy, and second, a commitment by the President to add 50 to 100 labor lawyers to that staff in an office that would just do 10J injunctions. If you have the injunctions in affect, you have the immediate risk of contempt, of even jail, for an employer that continued to resist the law in one way or another. I think you also need, prior to doing these 10J injunctions, a predicate set up, findings by presidential commissions that the right to join a union is affectively impaired, but there's a national emergency here that there's a need for strong action. Something that a Federal Court could hang it's hat on and say yes, there's a public policy here. We should issue these injunctions routinely in these cases.

Now, it's going to cost money to add 50 to 100 lawyers to the NLRB, but I would submit that's a pretty cheap price in the end for fundamental labor law reform and if that message gets out to employers, you already have affectively amended the labor laws already and you haven't even had to pass an Act of Congress. It's just an appropriation.

The second thing that I would do or urge as a part of this is, of course, a whole series of rule makings by the NLRB on card checks as you get new democratic appointees on that board. And I recognize that this is kind of palliative but I think it's affective and worth pursuing, in the short term. There are a variety of other things and I've listed some of them in the statement, that I set out there. I think that the President, the Secretary, and yourself ought to experiment or try to educate people about the Treaty of Mosterict (phonetic) in European type approaches to labor solutions. Not in terms of acrimonious, labor/management set offs, which Americans don't instinctively relate to, but the social partners approach that is in Germany and Scandinavia.

How do you do that? For example, you could you take the Bonneville Power Administration, the TVA, etc, go to the unions there and say, what we want to try here, or the Post Office, what we want to try here is a works council. There will be no work rules except, no firing except for just cause and lay offs by seniority. Everything else will be run by the Works Council. Try this approach. I think it would be dramatic and Americans would be very interested to see this sort of thing tried.

The second thing that could be done, and you're very much aware of this sort of approach, because I've know you've had legislation on this in the past, but Clinton, Reich, etc, right now, could take government contracting and say one of the conditions of getting a government contract or not one of the conditions, one of the requirements that we're going to impose, is not only that you follow the labor laws. That's the least of it, but that in addition to that, we'd like to see—it's an important factor to us, that you have some employee participation. At a minimum, at a minimum, the contractors, the government contractors, defense, etc, ought to be following the social charter, of the Treaty of Mosterict. It is being put into affect in all the EC member nations. By that I mean, having employees with the right to be consulted about basic decisions affecting the future of the firm, which is literally the language of the social charter.

As we go through a de-conversion process with the defense industry, shouldn't defense industry workers have that same kind of right and shouldn't the government require that on the defense contracts that are now being given out? I think that would be an excellent model of again dramatizing to Americans that there's another way of doing things besides authoritarian management and workers with no rights and that over in Europe, they're doing something different.

The final thing, I've gone beyond 5 minutes but the final suggestion that I'd like to make. This is my own strong personal cause, maybe not shared by other panelists is that we need to make unions more democratic. And we cannot affectively go to the American people and talk to them about fundamental labor law reform and get their sympathy unless we also talk about making unions more democratic.

I do not think that unions are corrupt as many on the right do or even remotely as corrupt. On the other hand, there are serious problems and one way of fixing those, even by rule making is to take 401H, of the Landrum Griffin Act (phonetic), which says that members have to have affective procedures for removing officers who are guilty of misconduct and saying that to implement this section, there should be a fall back right that all members have, which is to get rank and file elections if they want them. I agree with labor leaders that we should not compel unions to have rank and file elections, but I also believe that there ought to be a procedure in place where members can petition for a referendum as to whether they want rank and file elections and if five to ten percent sign or effectively petition for this, that there ought to be referendums at periods of time that could be sent out in law as to whether members want to elect their own leaders directly, ala, the Teamsters.

I certainly feel that having leaders like Rich Trumpka (phonetic) instead of Tony Boils (phonetic) nephew or Ron Carey (phonetic) instead of some protege of Jackie Pressor (phonetic), I certainly feel that this is not going to cause any lasting harm to the labor movement. And it is certainly going to make it, other aspects of labor law reform, much more attractive to the American people.

Thank you.

[The prepared statement of Mr. Geoghegan follows:]

PREPARED STATEMENT OF THOMAS H. GEOGHEGAN

Thank you Senator Simon for inviting me to testify. Here are a few modest ideas for sweeping labor-law reform.

First, all of us have to make a case that the right to join a union is a basic civil right. In a way, it is a right to vote. Not a right to strike, but a right to say, without being harassed, without being fired: "Yes, I'd like to join a union."

Second, we have to explain that labor-law reform can be, should be, an economic recovery program.

It is said that Germany is President Clinton's "favorite economy." The most single obvious external difference between the German economy and ours is the fact that over 40 percent of the German work force are in unions. And they negotiate wage agreements that cover over 90 percent of the German work force.

This has three major effects on an economy:

(1) Unions stimulate demand. Once this was a post-war platitude; now it almost seems like a new idea.

After World War II, we had a bigger deficit than now, and an even greater problem of military conversion. Yet we had an explosion of economic growth. And we did not cut taxes? How did this happen? Answer: People were in Unions. That's how in the 1940's (and 1950's and 1960's) they could buy the cars. Just watch this TV show, Homefront. Back then we were unionized wall-to-wall, just as Germany is today.

Now, even with productivity increases, American wages have been flat, or falling. How can we sustain a recovery without gradually rising wages? There has been a thesis, in the Reagan and Thatcher years, that the lower the wages, the better off our people will be. One need not be an economist to see a serious logical problem here.

The economic stimulus of a wall-to-wall labor movement could be greater in the 1990's than it was in the 1940's. I am aware of an economic theory which claims that in a static, closed economy, in perfect equilibrium, higher wage rates will not stimulate demand. Our economy is not in equilibrium, and second, it leaves out the role of foreign trade.

A unionized, high-wage economy means people can afford better quality. This stimulates higher-quality production. People have more money to demand higher quality goods. In countries with high wages, like Sweden, Germany, etc., people are more likely to demand the kind of quality that makes the nation's output more attractive abroad.

When we drive down wages, we create a K-Mart economy, for K-Mart workers, who shop at K-Mart because they make K-Mart wages. And we have nothing that Europe and wealthier countries want to buy.

We open ourselves more to competition from China, the Philippines, and Mexico. If we turn the U.S. into a low-wage mass-market, those countries are going to have a competitive advantage in reaching and supplying the needs of this market. To the extent we raise the wage level, we become less vulnerable to that type of competition. So, the way to compete with those cheap-labor countries is not to lower our wage rate but to raise them, and thereby create more of a demand for goods than the countries that lack the skilled workers, etc., can provide.

(2) A unionized economy makes the country more capital-intensive. In Economics One, we learn that if labor costs rise, we substitute capital for labor. If they fall we substitute labor for capital.

Ironically, we are tending to lose our manufacturing based not because our wages were too high, but because they are too low. Investment in low-wage, falling-wage labor-intensive types of business is more attractive.

All through the 1970's and 1980's, we have had a public policy (namely, our labor laws) in favor of pushing wages down. At the same time, our capital costs were high. So, naturally, business investment in the U.S. has flowed, inexorably, from capital-intensive to labor-intensive types of business.

If we had rising wage costs, they would discourage investment in low-wage jobs, and reward investment in such things as manufacturing, where labor is just a small fraction of the total cost.

The most unionized countries, like Germany and other Northern European nations, are also the only countries in which the manufacturing sector has not shrunk.

With no labor movement, the U.S. economy has moved to an extraordinary part-time, late-night, service economy. Why go through the nightmare of borrowing capital when you can make money with temporary labor, and falling wages?

The idea that job training will reverse this trend is naive. There is no precedent where it has done so. Indeed, U.S. business is now exporting the jobs of engineers,

computer analysts, and the like, i.e., the symbolic analysts that Mr. Reich said would be our only hope to compete.

If job training is our only hope, then we are doomed. President Clinton said at the Little Rock summit that there is no job training crisis, but there may be if the economy picks up.

Now the economy has picked up, and there is still no job training crisis. Indeed, the real crisis is: There is no crisis.

We have it backwards: The Germans, the Northern Europeans did not start with job training, apprenticeships, etc., and then get to high wages. They started with high wages. This leads to substitution of capital, and job training, apprenticeships, etc.

(3) A unionized economy, say, like Germany's could create a social contract within a firm. It could change the firm's culture. At least, a union guarantees a chance for truth-telling, for real feed-back. As firms become more authoritarian (i. e., union-free), they become perversely harder to manage. In fact, the large firms in this country, like IBM, seem to be dinosaurs. Not because they are large, but because they are authoritarian. Firms like GE, Xerox, etc., are large, but they take their unions seriously, give real voice to their employees, and compete quite successfully.

We can use labor law, as the Europeans have, to change the culture of the firm. Each firm ought to be a "mixed government," with the different groups, interests or factions forced to take into account each other's point of view.

It is not the size of the firm that is critical, but the way it is governed. This is true especially in a world economy based not so much on quantity and price but on quality and innovation.

But aren't union work rules obsolete? Perhaps, but only because they are a response to a system even more obsolete, the doctrine of absolute management rights.

We need a new vision of corporate government, with Power-sharing. The Treaty of Maastricht requires that employees be consulted about all major decisions affecting the firm.

And without that vision, without our own Maastricht-type "social chapter" here, America will be less democratic, less competitive and less productive. That is the most compelling case for fundamental labor law reform.

Now may I turn to a few specific ideas: some that are quick fixes, others that are visions.

I.

A LABOR CIVIL RIGHTS ACT

Why not propose a "Labor Civil Rights Act"? The idea is to take as a model the Civil Rights Act of 1991, and declare that the right to join a union is a "civil right" like any other, and enforceable the same way.

How do we get a strong progressive coalition to change our labor law? Labor law is an opaque, archaic subject to most Americans. The original Wagner Act really created rights not for people but for organizations. As Americans, we do not easily grasp the idea of collective rights that run to unions and employers as organizations.

Also, our labor law came out of the 1930's, and has not yet caught up with the civil rights revolutions of the 1960's, and even the present 1990's.

The 1991 Act now provides an excellent model for a new type of labor law.

An employee, discharged for trying to join a union, would have the same remedies available in civil rights law. These include:

- compensatory damages (not just back pay),
- punitive damages (based on the employer's size and conduct),
- preliminary and permanent injunctions,
- and legal fees and other relief.

Union-busting consultants would be individually liable, too, if they conspired with the defendant employer to fire workers illegally.

Such a bill would be consistent with existing labor law. It would only give a worker the same right to sue (for a special type of "ULP") that an employer now has with LMMA Section 303 (for a special type of "ULP," the secondary boycott).

The principle would be "mutuality of remedy." It would not upset but simply restore the balance of rights between workers and management.

On the other hand, the bill is novel, too, and could have the effect of opening up the dark, closed world of labor law, by treating it like any civil rights law. If we make labor law more understandable, less opaque, we get more allies and public support.

Indeed, the right to join a union was, in a way, the original "civil right." It is time for this right to catch up with the legal revolution of the 1960's.

If such a bill were law, it could attract hundreds of lawyers into taking up the union cause. They could get punitive damages, juries, and fees. Proof would often be easier, too, than in civil rights cases. In most organizing drives (unlike most Title VII cases), the very purpose of the discharge is the in terrorem effect. People are supposed to see the smoking gun.

Think of it: juries, punitive damages, etc. Just by treating the right to join a union like any other civil right.

Any lawyer could take up one of these cases. Yes, this could appear messy. But wouldn't it quintuple, by 50 times, labor's current staff resources? And as Title VII's history shows, these suits do work, over time, in changing the way employers behave.

The bill could also withhold the right to sue, as under the Railway Labor Act, when a certified union is in place.

This bill could appeal to several groups:

- bar associations and legal-aid groups,
- civil rights and women's groups, wishing to attend to their pink-collar colleagues, and
- last, but not least, the whole non-union American public, which has no effective right to join a union.

II.

A SPECIAL APPOINTMENT: NLRB GENERAL COUNSEL

We can also have substantial labor law reform without a new law. On this point, Senator, you could be most helpful.

The President should pick, as NLRB General Counsel, a lawyer who will be committed to a policy of bringing Section 10(j) preliminary injunctions, in all firings of pro-union workers, in all organizing drives.

The appointment of a truly great General Counsel could be, in some ways, almost as effective as an act of Congress in restoring the right of Americans to join a union, freely and fairly.

Under current law, workers fired for (say) putting on a union button, or expressing support for a union, have to file charges with the NLRB. The charges are often pending for 3 to 4 years. The NLRB cannot enforce its orders. Even if reinstated, after four years of litigation, the worker gets only a thin sliver of back pay.

The General Counsel could, but rarely does, get a preliminary injunction reinstating the worker immediately while the charges are pending. This is a so-called "Section 10(j) injunction."

This is in stark contrast to the way a General Counsel treats a "Section 10-injunction." Here, when there is merely a charge that a union broke the law (e.g., by engaging in a secondary strike), the General Counsel must seek a preliminary injunction, while the charge is pending before the full NLRB.

Section 10(j) is, or has been, a matter of discretion. But a great General Counsel could decide, as a 2-year experiment, to seek such injunctions, always, in all organizing drives.

The new General Counsel, named by the President, could take the job on the condition of being able to hire 50 to 100 lawyers.

They would be in a special office to bring Section 10(j) injunctions. That is: to go into court for every illegal firing, even before the Administrative Law Judge takes up the case.

Sometimes courts decline to grant injunctions, and say the union is not "really" weakened, by the firing.

But the General Counsel could argue that the firings are so routine the whole Act is in jeopardy. Each illegal firing contributes to a collective irreparable injury. Also, the point is to deter not only this defendant employer, but all other employers who might use the tactic.

The General Counsel should seek to join, as defendants, any union-busting consultants.

The appointment of even a great "General Counsel" of course, is no substitute for real labor-law reform. To do it this way, through one remarkable appointee, is fraught with peril and the risk of backsliding.

Yet the right General Counsel, with power over the injunctions, contempt, fines, etc., is more important by far than any single appointment to the NLRB.

Ultimately, as the NLRB changes, the full Board should support the General Counsel's new policy on seeking these "automatic" injunctions under Section 10(j).

Indeed, the President and Congress should ultimately support this approach by law. The Secretary of Labor should put out a report, based on testimony, fact finding, etc., on the loss of the right to organize, and the need for effective legal responses.

The Secretary's Report should set out principles, like the "Clinton-Simon Principles," for restoring the integrity of the rights in the framework of existing law. Each new NLRB appointee should strongly support these Principles.

Finally, the Congress should agree to add 100 or so special lawyers. As personnel measures go, this one will cost a lot of money, several million dollars a year. But in terms of the result (i.e., restoring the right to join a union), it is a ludicrously tiny increment of money.

III.

A "SOCIAL PARTNERS" APPROACH TO PUBLIC CORPORATIONS

Why not experiment, with a European-type works council, in one or two of our public corporations?

The "prototype" could be the TVA, or Booneville Power Administration, or the Park Service, or something else.

I am speaking here of joint employer-employee management. It would be, in effect, a Works Council, although we need not use the "European term." The Works Council would be made up, 50-50, in equal number, of managers and elected employees (who could be union officials). There would be two, and only two, work rules: layoff by seniority, and just cause for discharge. The Works Council would run everything else. The union might have to agree to rewrite the labor contract to this extent.

After TVA, or BPA, or the Park Service, maybe the model could spread to the Post Office.

After a year, any party could agree to go back to the old system.

The President would promise, as the experiment proceeded, to report the results to Congress. The idea is that some of these public corporations could be, like the States, "laboratories for democracy."

IV.

PROMOTE EMPLOYEE INVOLVEMENT THROUGH GOVERNMENT CONTRACTS

Another legal change could come through Federal procurement practices. The President could require government contractors, in some way, to "involve, inform or consult with" employees.

The Executive Order (EO) might apply first only to defense contractors. As they go through the stress of conversion, it seems fair to require of them a "social partners" approach.

This requirement would not be a factor in awarding contracts. Nor would it mean any one type of involvement. The analogy would be to the affirmative action EO's, which do not set quotas but require action of some kind.

The rationale? To help design "the new American workplace." The government could say that employee involvement seems to lead to increased labor skills and increased productivity. To this extent, the new EO program could have spillover benefits for the economy.

I see no reason why at least our government contractors cannot meet the minimum standards of all EC firms under the new Maastricht social chapter. It has not hurt the Germans (to say the least), and it will not hurt us, especially on this limited pilot basis.

The EO should identify valid forms of employee involvement and distinguish these from "employer-dominated associations," prohibited by federal labor law.

I would start slow and evaluate the program at the end of a year. If successful, it should be extended to other contractors.

Of course I assume in a Clinton era that the EO will require each contractor to invest a certain minimum in job training. There is no need to "phase in" this requirement.

V.

LABOR ARBITRATION: GETTING LAWYERS OUT OF THE WORKPLACE

By rule or executive order, the President or Secretary of Labor could push employers and unions into faster, cheaper, more informal types of arbitrations. Such a rule could change, the types of arbitration which the courts would order.

Ever since the "Steelworkers Trilogy" cases of 1959, the Federal courts have strongly favored arbitration as a matter of "public policy." But in later years, these arbitrations have become expensive, long, and over-lawyered. The parties file lengthy briefs. Arbitrators take months and even years to turn out opinions. This "overlawyering" of an informal process creates labor-management tension, cuts into productivity, and hurts the economy. On the union side, the lawyers become as important as the officers.

By rule or executive order, the new administration should say it is refining or revising the public policy in favor of arbitration, as set out in Section 203(d) of the Labor Management Relations Act (LMRA). The real intent of Section 203(d), the new administration should say, is to encourage informal, cheap, quick arbitrations, with no lawyers, no briefs, and fast rulings.

Section 203(d) would be "interpreted" as disfavoring the high-cost, drawn-out, methods often used. When a case can reasonably be resolved by the informal method, public policy strongly favors the use of that method.

Federal judges in rulemaking would gradually take their cues from such formal interpretations of Section 203(d). Why let the courts develop the "public policy," as they have since the Steelworkers Trilogy, when the Secretary of Labor has the statutory authority (and duty, in my opinion) to do it for them?

VI.

UNION DEMOCRACY

The cause of labor-law reform becomes much more attractive to the public if we also require greater democracy within unions.

The most exciting development in the labor movement during the Reagan era was the election of progressive new leadership in the scandal-ridden Teamsters Union.

The election rules developed for this special, extraordinarily open election should be studied by the new Secretary of Labor and Congress, and applied to union-officer elections generally.

For example, candidates should be able to present their views in the union magazine. They should have access to the membership list. There should be a right to get a court order, in special cases, for a "neutral" to count the vote.

But most of all, the Secretary or Congress should require implementation of Section 401 (b) of LMRDA, which requires unions to have effective procedures for "removing" officers with organized-crime connections.

Obviously, the most effective way of "removing" them is to give union members the right, as a last resort, to have rank-and-file elections, as in the Teamsters Union in 1991.

I agree that Congress should not necessarily require rank-and-file elections, since some unions may not want them. But Congress or the Secretary, under Section 401(h), could require unions to provide for referendums on whether to have rank-and-file elections. If, say, 5 or 10 percent of the members petition for such a referendum, a union would be required to permit a referendum votes by all the members as to whether they want to have the right to elect the members directly.

Indeed, such a procedure would be the most effective way of carrying out the mandate of Section 401(h).

A provision like this, requiring union democracy, would make clear that Clinton-Reich-Simon labor-law reform is not in any way a windfall to a "special interest." It is, instead, a bill of rights for all of us as Americans. To put it as a civil rights bill for all of us may even attract some Republican support, or make it harder for Republicans to continue a filibuster against it.

One final suggestion: We must make clear that Labor-law reform is not some "zero-sum" political game. If it passes, both Democrats and Republicans gain, because it will improve, fundamentally, the living standard of the American people. In Germany, for example, the Christian Democrats like Kohl support, strongly, a unionized economy. Indeed, in a massively unionized economy, Christian Democrats have thrived. Chancellor Kohl even pressed hard for a "charter of labor rights" at the Maastricht European summit.

May I urge, then, that this summer, a group of Republican Senators go to Germany, talk to the conservative-party politicians there, and find out why conserv-

atives not only see the benefits of a unionized economy, but even welcome it. A high-wage, unionized economy is by no means a problem for a right-of-center party.

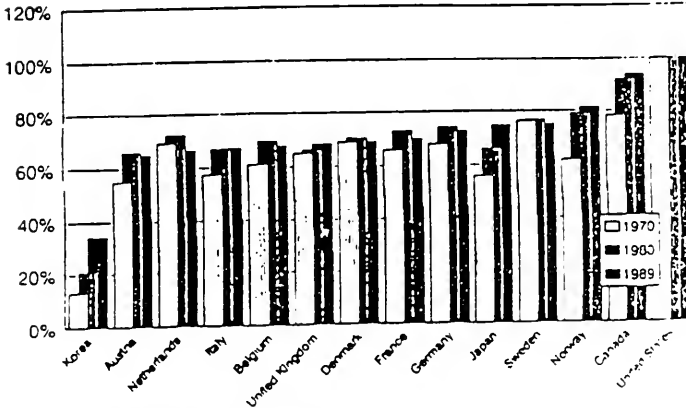
It can make people more conservative, in fact, by giving them more of a stake in the economy.

Anyway, we the party will ever thrive for long in a country of falling wages, temporary workers, late-night child labor, and a declining standard of living. Disraeli was a great political genius of the Conservative Party, because he gave working people the right to vote.

I hope Senate Republicans show their own Disraelian-type genius and vote to give all of us, as Americans, the right to be citizens, real citizens, with full voting rights, and a growing stake, in the world economy to come.

FIGURE 9

Productivity of Other Nations as a Percentage of American Productivity 1970, 1980, 1989



Source: Bureau of Labor Statistics, April 1990, unpublished data

EMPLOYMENT POLICY FOUNDATION

APPENDIX 9

% and/or # of elections conducted by stipulation v. hearing:

Year	Stipulated	Hearings	Elections Total	% Stipulated	% Hearings
1990	3,552	673	4,289	82.8%	15.7%
1989	3,699	709	4,497	82.3%	15.8%
1988	3,456	702	4,229	81.5%	16.6%
1987	3,382	686	4,168	81.1%	16.5%
1986	3,704	804	4,644	79.8%	17.3%
1985	3,795	824	4,743	80.0%	17.4%
1984	3,668	700	4,512	81.3%	15.5%
1983	3,481	801	4,481	77.7%	17.9%
1982	4,008	953	5,205	77.0%	18.3%
1981	5,834	1,506	7,659	76.2%	19.7%
1980	6,262	1,647	8,250	75.0%	19.7%
1979	6,152	1,500	8,177	75.2%	18.3%
1978	6,197	1,506	8,380	73.9%	18.0%
1977	6,967	1,779	9,624	72.4%	18.5%
1976	6,081	1,733	8,749	69.5%	19.8%
1975	5,872	1,789	8,687	67.6%	20.6%

APPENDIX C

A summary of all cases with NLRB objections/challenges are listed

Year	# of Elections	Total Objections	Total Challenges	# Objections	# Challenge
1990	4,389	520	143	17.31	2.21
1989	4,566	535	280	11.75	6.15
1988	4,359	418	269	8.79	5.61
1987	4,187	397	193	9.93	3.63
1986	4,662	544	294	11.79	6.11
1985	4,923	553	299	11.79	6.25
1984	4,567	773	430	17.04	8.31
1983	4,923	227	118	9.43	3.79
1982	5,264	331	189	10.11	6.21
1981	7,989	862	662	10.61	5.74
1980	8,521	1,056	689	12.41	5.39
1979	8,249	827	253	9.86	2.01
1978	8,664	854	661	10.15	5.45
1977	9,795	1,132	522	11.61	5.11
1976	8,899	917	511	10.31	5.74
1975	8,918	1,094	455	11.51	5.11

Continuation of data presented on the preceding page

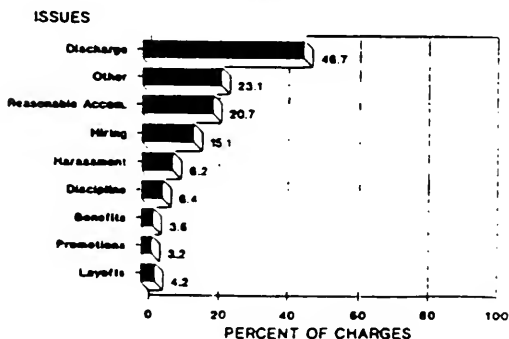
Appendix D

NLRB ELECTION RESULTS
TEN YEAR COMPARISON
(MOST RECENT 10 YEAR PERIOD AVAILABLE)

Time Period	Number of Elections	Number Won By Union	Votes Cast for Unions	Percent Won by Unions	Votes Cast Against Unions	Total Voters	Percent of Total Votes for Unions
April 1981 through March 1982	5,223	2,222	110,932	47.52	146,918	257,850	41%
April 1991 through March 1992	2,962	1,378	48,798	46.52	69,511	118,309	41%

Source: National Labor Relations Board Election Reports
Six Month Summary, April Through September 1981
October 1981 through March 1982 and April through
September 1991 and October 1991 through March 1992

Appendix E

ISSUES IN EEOC
ADA CHARGES

Senator SIMON. I thank you.

Don Turner, happy to have you here with us here.

Mr. TURNER. Good morning, Senator. I'm Don Turner. I'm representing the Chicago Federation of Labor. I'm also the Chairman of the Cook County Cooperative Organizing Committee and as such deal with organizing in the Chicago and Cook County Metropolitan area.

I'm pleased to have this opportunity to speak about the troubles we've been having and I think to put it in some kind of perspective, in 1989, late in the year, I was sent down to Nicaragua as an election observer to ensure that there was some kind of fairness and the people had freedom of association, when they had political parties and campaigns in that election.

And when I was down there I learned that this was kind of a universal feeling, this sense of fairness and people have a basic understanding about how an election should go and what's fair. And I think that this issue in terms of elections in the work place was probably best explored by Richard Bensinger (phonetic) of the AFL-CIO Organizing Institute when he talked about what would have happened if we had the last presidential election take place under the same set of rules that we have in the work place.

So, if we looked at the 1992 presidential election between Clinton and Bush and we talked about how that election would have been run under the same set of rules we have in the work place, here's some examples of what would have happened.

In the 1992 presidential election, imagine if President Bush had unlimited television time, including several hours a day of compulsory viewing by the electorate, but Clinton was restricted to door to door campaigning. That's what we're faced with in the work place. In a union organizing campaign, employers have a captive audience for eight hours a day. Union organizers have no access to the work site.

For example, at Nissan Motors, the employer who fought the UAW, he put T.V. monitors at every single work station and broadcast antiunion messages on T.V., eight hours a day and the workers were forced to stay there at their work stations and view these antiunion messages.

Another example, in the 1992 presidential campaign, imagine if Clinton supporters risked losing their jobs, or worse yet, if Bush decided to fire one Clinton activist in every precinct to send a message to the voters. In the work place, that's exactly what we're faced with. Union supporters face constant fear that they'll lose their jobs if they go to form a union. Paul Weller, a Harvard law professor, looked at this issue and he said, one out of ten union activist in a campaign is fired.

Now, what happens is you don't just get rid of that one vote. You basically terrorize everybody in that work place. It's an economic terror and it spreads that kind of message of economic terror in the work place.

We had a case right here in one of Gene Moats locals, that's been organized at a place called Newlyweds Foods. The employer not only fired some of the people who were organizing the union. I might add, they won a major victory there, overwhelming victory, but then after he fired him, he tried to deny them unemployment

benefits and is pursuing people, legally, in terms of denying them unemployment benefits.

I just talked with the father of two children, who was involved in that campaign, who has no money coming in, is living on hand-outs from other workers. So, this kind of thing goes on.

In the 1992 presidential election, imagine if Bush decided just arbitrarily to delay the election a few months. Well, we have that kind of thing going on in the work place all the time. Delay is a tool of the employer. It's readily available for employers and the employer can use the NLRB procedures to delay the election for months, sometimes even years.

Imagine in the 1992 election, if every time you got an outspoken supporter of Clinton, they were denied the opportunity to go to a meeting or rally. We have that all the time. Employers call meetings of all the employees and specifically exclude the union activists from the meetings.

In the 1992 election, imagine if Bush supporters could wear buttons, campaign buttons, but Clinton supporters knew that if they put a button on they risked being fired or terminated from their job or suffered a great economic loss, because that's exactly what we're faced with in the work place.

In 1992 imagine, if, despite everything, Clinton won the election but Bush said I'm not going to accept the results of the election. There was a lengthy appeal process. Bush stayed in office the entire time of the appeal and finally, years later, after all kinds of lawsuits, Clinton finally took office. That's exactly what we're faced with today in work place elections.

And I think anyone looking at that. Anyone from the United States or from Nicaragua would have to look at that kind of an election and say, that's not freedom of association. That is not democracy in the work place.

So, we have employers who challenge the results of elections, no matter how overwhelming the results. In the case of Newlyweds Foods, I think, my recollection was an 80 percent victory for the union and we get a challenge from the employer on the results of the election. I mean, it wasn't even close and now that process is delayed again.

So, you know, we have this fear of economic retaliation by the employer and what's the result of this? What's the results for us? A drop in union elections. We've dropped from 9,000 union elections a year, about 10 years ago to 3,000 a year. This is an interesting thing, because all that time, the popular approval for unions in all the polls taken has remained relatively constant. Ten years ago, we had the highest average weekly wages and benefits in the world, right here, in the United States. Today, we're number 13 in terms of wages and benefits packages. This is despite the fact that all the international standards say that U.S. workers are still the most productive in the world.

So, here we are the most productive workers in the world, but we're 13th in terms of the workers themselves actually getting benefits. We have a decline in workers who are covered by private pension programs. We have a decline in the average earnings of American families that forces them to work more hours today, than they did 13 years ago. We have decline in American families who own

their own homes. We have stagnant wage levels for union members and we have a steady decline in real wages for nonunion members. We have less workers covered by adequate health care coverage, the working poor in many cases. 31 percent of all our working people do not earn enough to be above the poverty line and I submit that this decline is the direct result of the decline in union membership over that period of time.

The simple truth is that as unions stay strong and grow stronger, all workers, union and nonunion, see their benefits, pensions and so on rise because we're really the voice for front line workers. There is no other voice in America for front line workers. So, the critical point, I guess, is as unions go, so go all the workers, union and nonunion.

Thank you for listening.

[The prepared statement of Mr. Turner follows:]

PREPARED STATEMENT OF DON TURNER

Good morning, I am Don Turner and I am representing the Chicago Federation of Labor. I also serve as the director of the Cook County Cooperative Organizing Committee.

I thank you for the opportunity to speak about the troubles we have in organizing, and in winning union representation elections under the National Labor Relations Act.

Most Americans assume that we have free and open elections in the workplace. They assume that rights of freedom of association can be exercised without punishment. That is not true in today's workplace.

In late 1989, I was sent by the AFL-CIO to be an election observer in Nicaragua in an attempt to maintain some equity and fairness in the election. This trip showed me that democracies require a belief in freedom of association and the necessity for fundamental fairness in elections that is what prompted the world community to send observers down to Managua. This belief in the need for fair elections is present and essential in all democratic societies. Fairness and freedom of association is required, demanded, and expected in elections in America except in the workplace.

Richard Bensingier of the AFL-CIO Organizing Institute offered some examples of what the recent presidential election would have looked like if President Clinton had to run under the same rules as union representational elections.

1. In the 1992 Presidential election, imagine if Bush had unlimited television time, including several hours a day of compulsory viewing, but Clinton was restricted to door-to-door campaigning.

In the workplace, during a union organizing campaign, employers have a captive audience for 8 hours a day, while union organizers have no access to the worksite. For example at Nissan, the employer fought the United Auto Workers by placing TV monitors at every work station. Workers were forced to view daily anti-union messages. During every union campaign, workers are bombarded with speeches and one-on-one arm twisting by supervisors in an attempt to get them to vote against the union.

2. In the 1992 Presidential election, imagine if avowed Clinton supporters riaked losing their jobs. Or worse, Bush decided to fire one Clinton activist in every precinct to send a message to the voters.

In the workplace, union supporters face the constant fear that they will lose their jobs if they campaign to form a union. One out of 10 union activists is fired, according to Harvard law professor Paul Weiler. The purpose of such firings is not only to get rid of one vote, but to spread a message of economic terror in the rest of the workplace. The only penalty for firing union supporters is back pay and reinstatement long after the election is over—sometimes years later. At Newlwyed Foods, in Chicago, the company even fought a fired union activist in his efforts to secure unemployment compensation. So far, the company has been successful and a fired union activist still has no unemployment compensation. So this family man, with I believe two children, now has no income, but lives on contributions from fellow workers.

3. In the 1992 Presidential election, imagine if Bush decided to delay the election for a few months.

In the workplace, delay is a readily available weapon for employers. Even when an overwhelming majority of employees support the union, the employer can use NLRB procedures to delay the election for months, even years.

4. In the 1992 Presidential election, imagine if once outspoken Clinton supporters were identified, they were prevented from going to any meetings or rallies.

In the workplace, a typical employer tactic is to remove and isolate union supporters, preventing them from attending employer anti-union meetings. These meetings then present a completely one-sided, biased view of unions.

5. In the 1992 Presidential election, imagine if Bush supporters were encouraged to wear campaign buttons, but Clinton supporters knew that wearing a Clinton button meant the risk of great economic loss.

In the workplace, wearing a button in a union campaign on the shop floor can easily cost you your job. Often union supporters are intimidated, so their views are not heard.

6. In the 1992 Presidential election, imagine if—despite all—Clinton wins but Bush refuses to accept the results of the election. During a lengthy appeals process, Bush stays in office. Finally after years, the litigation ends and Clinton takes office.

In the workplace, when the union wins, no matter how large the margin of victory, employers routinely challenge the results of elections. The NLRB will then spend months, even years, investigating minor and completely frivolous charges. By the time the company is ordered to bargain, many union supporters have quit or been fired, and new hires have been screened to eliminate union sympathy.

In these few examples, you have some small sense of the loss of the rights of workers: to freedom of association . . . the lack of democracy in the workplace . . . the fears of economic terrorism by employers . . . the unfairness and exploitation of the representational election process.

The results—

—A drop in union elections from 9,000 a year 10 years ago to 3,000 a year, and this is while popular approval of unions held steady.

—Unions have lost considerable strength since 1955, from 34 percent to 16 percent, a decline of more than half. In Germany, 33 percent remain unionized—Japan 26 percent—Sweden 84 percent—Canada 33 percent—Switzerland 28 percent.

—The situation is worse than it seems, since we now represent only 12 percent of those in private industry, where the real power, wealth, and resources of our society are concentrated.

—It is important to note the huge drop since 1980, 25 percent to 16 percent overall, and to 12 percent in the private sector. It is no coincidence that these were the Reagan-Bush-Quayle years.

—Ten years ago the highest average weekly wages and benefits were paid in the United States. Today we have slipped to #13. This is despite the fact that international comparisons show that the U.S. worker is still the most productive worker in the world.

—This decline in average earnings has forced American families to work more hours outside the home to keep up.

—A decline in workers covered by private pension plans.

—A decline in American families who own their own homes.

—Stagnant wage levels for union workers and a steady decline in real wages for non union workers.

—Less workers covered by adequate health care coverage.

—Over 31 percent of all working people don't earn enough to be above the poverty line!

—I submit to you that this decline is directly linked to the decline of unions during the same time!

—The simple truth is that as unions stay strong or grow stronger, ALL workers, union and non-union, benefit as their wages, benefits, pensions, etc. grow.

—There is no other voice for America's front line workers than trade unions.

—Critical point—as unions go, so go all workers, union and non-union.

Thank you for listening.

Senator SIMON. Thank you.

Mike Breslin with the Chicago Building Trades. I'm happy to have you with us here, Mike.

Mr. BRESLIN. And I'm happy to be here, Senator and I wanted to thank you for the good work that you always do in labor's behalf. I've been well aware of it for a long time and the many times that I've called upon you to help us in labor and you've always

helped us. Especially, with that problem we had with illegal aliens not too long ago.

We desperately need labor reform and labor law enforcement in this country. There's a tremendous anti-worker bias in the regulatory agency, the National Labor Relations Board. Appointments to the Board, which was designed to protect employees' rights, have solely been anti-worker, as far as we can see, as of judicial appointments, the net effect is it's kept workers uninformed and it's instilled a real fear in our working people.

For example, the Anti-striker Act or law, the worker replacement situation, I got to tell you it's a frightening, frightening thought to believe that if you go out on strike you're going to be replaced, lose your job forever, because you might have said something in frustration that was taken out of context. We have to do something about such situations in this country. There's just no question about it.

The unions want to organize workers but can't tread on property open to everyone else. The definition of freedom is different for those seeking representation through collective bargaining. The attitude of men and women in the working class toward the government including the courts is very much like it was before the new deal. You may be breaking some kind of Federal law if you decide to organize. There's no credibility as far as working men and women are concerned.

The middle class and organized labor are declining because we no longer have the ability to protect the jobs that create and maintain blue collar middle class. The building trades in the 30's were never middle class. We created the blue collar middle class. We created it through the freedom of collective bargaining. Our members' children in the 1950's, 1960's and 1970's attended colleges and were allowed to go on and become professional people. That's not going to be the case anymore unless we do something drastic about it. We created training programs in the building trades so we can continue our great traditions. There's certain things that take place today that hamper our training programs.

Today, we have illegal aliens performing in a pellshotty manner, our work for a shotty substandard wage, downgrading our industry and our regulatory agency, the National Labor Relations Board takes years to enforce cases of violation. A failure to enforce Davis-Bacon laws timely stalemates all of our efforts. Laws like helper classification reduced are prevailing wage and diminish the quality of our work. Failure to enforce OSHA costs life and limb in the construction industry. We continue to suffer. There is no sensitivity. The employer does not care to reinvest in the working community. The question as to why has organized labor diminished. It's very easily answered. We have no rights.

Give us the right to bargain in good faith. We'll do the rest. Give us a fair application of the National Labor Relations Act. We'll do the rest. Senator, we ask you today, to take our fight to the halls of Congress and to the House of the U.S. Senate.

The working men and women of this country have fought the wars that have made this country powerful. We've worked in the mills and the fields and the mines and on the highways. We've built buildings. We've worked in factories to make the economy of America strong. The working men and women of this country have

paid the bulk of the taxes and have allowed government and our society to persevere.

We ask you to spread our news in the great Houses of Congress in Washington. Allow us to earn a decent wage. Allow us to have the benefit of good health care. Allow us to have the opportunity of high education for our children. Allow us our guaranteed freedoms. Yes, even the freedom to choose representation and collective bargaining without intimidation or retribution. Allow us to realize a dream that our forefathers came to this country in search of, freedom and liberty and pursuit of happiness. Allow us our American heritage and we'll increase the numbers of organized labor. I guaranty you tenfold.

Thank you, very much, Senator.

Senator SIMON. I thank you.

Let me, as I direct these questions, if any of you—I'm going to direct them at one person. If any of the rest of you feel like responding, let me proceed.

Striker replacement, I agree, I'm a cosponsor. I also, unfortunately, am not quite as pessimistic as Tom Geoghegan, but I think we, at best, frankly, have a 50/50 chance of passing it. We would require 60 votes in the senate because of the filibuster situation. I think it is likely we're going to lose two or three democrats. That means that we really have to pick up six republican senators and I know of one or two but it's going to be—it's going to be close.

A second point you made on meaningful sanctions, I think that is very clear and I'm not familiar with this case that you just mentioned and for the record, Gene Moats is here. He'll be in the next panel, but you may want to comment even in this panel, Don Turner, and mention it. Right now, the penalty is basically back pay and that becomes, you know, it's almost a reward for resisting organizing. If you were to double or triple the back pay, or have some other kind of punitive action, it seems to me that would be desirable. Let me just, by way of background say, what I am been doing is drafting a whole series of bills so that if there's a lot of resistance to one, maybe we can get the others through. Now, I'm not going to introduce anything until October, but we have what, about ten bills drafted now?

MR. KENNEDY. We have seven.

Senator SIMON. Seven. There's a person I should pay tribute to, Brian Kennedy, who heads my subcommittee staff here who's been working on this. But somehow an increase in the penalty seems desirable. Now, have you reflected on what kind of penalty that ought to be?

Mr. WALSH. Well, in terms of double or triple back pay would certainly be helpful. I'm still not sure, depending upon how many people were discharged, how much of a penalty that is. Additional monetary penalties are obviously always a choice and at least in the number of our labor laws, we've used contract bars also. Certainly with the Davis-Bacon and the State preventing wage law repeat violations cause for contract bars so there can be no benefit from State contracts, whether it be for procurement for training or for tax credits or for other kinds of things. Any combinations of those, I think, is going to put us in a better position than we are today.

I think attitude also would, though. The attitude of the Labor Relations Board and the attitude of the administration about the labor movement and its role in society would also send a significant message as, I think, Mr. Geoghegan said, irrespective of law changes.

Senator SIMON. And that's clear. You touched on this also, that the National Labor Relations Board in the past, when we've had a republican administration, has kind of tilted slightly toward management and the democratic administration slightly tilted toward labor. It's been a pretty good balance and all of a sudden it's been way out of tilt. In terms of the penalty, any comments by the rest of you?

Mr. TURNER. Well, I don't—just a quick comment. It's actually back pay and reinstatement. But I think if we look at the history of that particular employer. I mean, some employers use this in a—I mean, every single time. Somebody is fired. That is considerably different than an employer who it happens and, you know, there's a questions about whether this is used in all the time everyday kind of a faction. And then there's I think, a question in terms of that employee and their life of how long is it before there's some kind of adjustment to this. I mean, if we're talking about somebody has been set off and we're talking about a light off that took place to discourage organizing campaign. If that person is returned in a week, it seems to me that you have a lot different circumstance than if it's two or two and a half years later, which we get into sometimes now.

Senator SIMON. Or Canada has, I think, it's 30 or 90 days, something like that that you have to make a decision.

Mr. TURNER. I'm just saying that the pain that that worker, the economic penalty that they've paid for being laid off for 2 years, the disruption to their family, maybe their children pulled out of college, or God only knows what other, you know, terrible circumstances they've been put through is a lot different when it's 2 years to come to some kind of an adjustment or if it's 2 weeks, you know.

Senator SIMON. And ordinarily, the penalty, practiced right now is if in the meantime, the person has another job, whatever pay from that other job is reduced from the ultimate.

Mr. TURNER. I think that other job thing, that's a desperation attempt from the part of that person. I don't think that should even be considered.

Mr. WALSH. Senator, you have Sally Jackson who used to be the Administrator of the Department of Employment Security. If someone is discharged from their job under the Unemployment Insurance Act and files for benefits, the Department has to make a decision in 14 days or it violates Federal law.

Mr. GEOGHEGAN. I suggest the penalty structure of the 1991 Civil Rights Act is a possible model and also the notion of the automatic section 10J. If under the 1991 Civil Rights Act, and I think this should apply only when a certified union is not in place. If you had a civil rights remedy with a certified union in place, I can understand it would create complications under the Railway Labor Act. You can't bring certain suits if a certified union is in place. But under the 1991 Civil Rights Act, you have punitive damages.

You have not just back pay but compensatory damages, mental suffering, distress, etc. You have a jury right and you have legal fees. No insignificant bill and you also have a case by case determination rather than a rule as to how strong a penalty ought to be in place.

Plus, you have the private right of action to an injunction, preliminary and permanent. Violation, of which, is contempt, fines by the Judge as appropriate and in worse cases, jail. It's happened to union leaders and in the case of the 10J, again, you have a situation where the General Counsel, if the General Counsel goes in and gets a preliminary injunction, at that point, if there's any further resistance, and we're talking about a time table here of within 10 days or 14 days or some similar time frame to what Rich Walsh was just suggesting, you know, the General Counsel and the Court determine what is the appropriate penalty and they have enormous discretion to do so. I think that might be better than to try to create a special set of penalties for employers.

The one thing that I feel is very important is to get across to the American people that this is a civil right that they have, not that unions have but that they have and that they can go even to their own lawyer to enforce it and this, in turn, also increases the union side clout. Not only can union lawyers go in and get legal fees, which would be quite substantial and a big reward to the unions but also private employers. Like there's a whole network of lawyers who do age discrimination, race discrimination, etc, who if, you were to propose an amendment to the Civil Rights Act, which is going to be opened up anyway to address the issue of legal fees, from what I understand. If you were to propose a Civil Rights Act that included labor, you would have a lot of support and I mean strong financial incentive support from groups outside the labor movement to do something about it.

The way labor law reform is set up now, nobody benefits but organized labor and in a way organized labor doesn't even benefit that much. You know, where's the legal fee provision? You know, that's something. I think there is a penalty structure that is in place that we've had practice with as Americans. We all know how the Civil Rights Acts work. It's not opaque to Americans. Let's use that penalty structure. Let's bring it into place here.

Senator SIMON. The other interesting feature, which I hadn't thought of is the Civil Rights aspects of it. But a business that violates and has a pattern and practice of violating the Civil Rights Act, cannot get any Federal contract. That is not true for a pattern and practice of violating labor law and which clearly, I introduced legislation, as you mentioned earlier, some years ago on that. That's one of the things, it seems to me, where we ought to go.

Let me ask you this also, Rich Walsh. As you study this issue, one of the areas where we run into problems also is you have an election, you go through the process. Then on that first contract you have a long, long, drawn out procedure that, in fact, militates against anything happening. What if, and I know in general there is a disposition on the part of labor and management not to add binding arbitration.

Mr. WALSH. Right.

Senator SIMON. But what if on the first contract, if after 60 days, when a union is certified, there is not an agreement and I'd like to address this to all four of you. What would be your reaction to the idea of having binding arbitration in that case, only?

Mr. WALSH. I think I mentioned as some alternative under those circumstances, and the example of Joliet was a perfect example, with a year, in fact, it was past the window for decertification. An exact identical situation happened with 2,000 clerical workers at the University of Illinois under our Public Labor Relations Act, just 2 months ago, where the first contract took well beyond a year after certification of the bargaining unit and it took political pressure as much as anything else to get the issue resolved.

There is no mechanism in place to get those first contracts. They are by their nature difficult to do anyway. You have an employer who may not be used to collective bargaining. A union that is new, hopefully with staff that is, bargaining their contract. It is always the most difficult contract to negotiate except for the last one unfortunately. And some kind of intervention, I think, could be critical. I think, I said that I have seen statistics that up to 40 percent of those employees in winning elections never see their first contract in collective bargaining and that defeats the whole purpose of the Act.

Senator SIMON. So if I may pinpoint you a little more. You're a member of the U.S. Senate and there's a proposal up to have binding arbitration after 60 days on the first contract, would you vote yes or no?

Mr. WALSH. I'm not sure 60 days is enough time, but at some point in time in that process it would make sense to have some kind of intervention.

Senator SIMON. All right.

Mr. GEOGHEGAN. Well, I'd be strongly in favor of that. I remember being in high school debating the issue of compulsory arbitration in my sophomore year. That was the standard debate topic and I think that it can be valuable time spent.

I'd also submit, Senator, that if there is fundamental labor reform on the right to organize, if you change one aspect of the labor laws. Labor laws are all of a piece, in my view. If you change one aspect and strengthen the right and set out a public policy, in favor of the right to bargain, you're going to have a whole change in the culture and you aren't going to have—one of the reasons employers resist collective bargaining the first time is that it's so hard to get the election in the first place. There are so many incentives under our law and culture to resist.

Even Caterpillar, a successful company, goes out to bust a union. Why? I think in part because there aren't any unions anywhere else. Why should Caterpillar have one? If we have a public policy in favor of unionization, if we have an affective change of labor law that announces that, if we have a President who is committed to collective bargaining and to mediation in those sorts of situations, I think that problem of the first contract, which is serious now, is going to lessen, but my suggestion to the Committee is that you start with fundamental labor law reform now in a way that makes sense to Americans on grounds of fairness. See what happens there before going to the next step and presenting something that is a

kind of new and novel idea, even to someone on the labor side like Mr. Walsh or myself.

Senator SIMON. If I may ask, Don Turner and Mike Breslin, but you were——

Mr. TURNER. Well, hearing it for the first time, I think you're finger is on what is a problem, clearly. Right now, we run, I don't remember the exact number, but it's less than half of the elections that we have actually result in a contract, half of the elections that are won. And there is a link between having union contracts and productivity. I mean, if we look at this thing in its broadest applications. The places that are the most productive, a place where workers are most likely to be involved in exercising their rights in the new management style, which revolve around the Demming principles tend to take place best where there are unions and there's some literature on that. I think I'd like to review the literature on this and look at the issue, but it's clearly, that something has to be done about this area.

I think the idea of a time limit is not a bad one. There has to be some kind of vehicle. I don't know if arbitration would specifically be it or how the arbitration would be structured or if you'd have a set of panelists or would you like bring in people from the Federal Mediation Board, you know, to be the mediators, because we have some structures that are available now, that have some potential, but I think we'd have to look at it more.

Senator SIMON. But, assuming you could work out a fair structure?

Mr. TURNER. The basic concept of looking at this as a point of difficulty, yes, absolutely.

Mr. BRESLIN. Senator, I haven't been involved in first contracts over the period of years myself. I have to say that the longer they last, the more likely they are not to consummate, not to be and when they have an election the next time out, there's a fear instilled in the workers that they don't want to vote the union in anymore, collective bargaining anymore, because the employer has them almost terrorized. Why you see what happens. The union's not capable of negotiating an equitable collective bargaining agreement and they're certainly not afraid of unfair labor practices with the NLRB, because of the way the laws are written and the way the laws are biased.

Senator SIMON. So if you, so if it's Senator Breslin and you're faced with a choice, do you vote for binding arbitration after 60 days or 90 days, would you vote for it?

Mr. BRESLIN. I think there is a period of time in negotiations where there does have to be some intervention, yeah.

Senator SIMON. OK.

Mr. BRESLIN. I'm certain 60 days is not long enough. Nor do I think 90 days is long enough but there's certainly a time, during the process of negotiations of a new contract, where an intervention is absolutely necessary.

Mr. TURNER. If I might expand, I think that the first contract has a set of problems to it that other contracts don't have. If you're in the second and third contract, there's a familiar area with the grievance procedures, so if you're talking about a 10 day delay to go from step two to step three, there's some track record and every-

body in the negotiations understands what that's about. Whereas in the first contract, it's kind of a learning process for the management side and the union side and the issues that the thoroughness of the discussion on each of the items in the contract are a little different than they are in later contracts. So I have some questions about the timing also.

Senator SIMON. All right. I would be interested in, on reflection, any ideas you might have in that area.

Tom Geoghegan, when you mentioned the productivity, and the high wage route to productivity.

Mr. GEOGHEGAN. Yes.

Senator SIMON. I don't think there's any question that's accurate. When you combine that with our following the low wage route, which we basically have been doing, and we have—our tax laws have encouraged corporations to spend their money, not in productivity or research but in gobbling up other corporations and finally, an issue where I differ with my friends, at least, some of friends in the AFL-CIO, the need for some kind of restriction on the deficit. The New York Federal Reserve Board study that says that we lost five percent of GNP or better than 3,000,000 jobs in the decade of the 1980's because of the deficit. Most of them manufacturing jobs, though I would guess a lot would be in the construction area, too. It just seems to me those are the fundamental things and this need to move toward the high wage route rather than the low wage route in our country is very basic.

You mentioned Germany. Germany has, among other things, what they call midbush timon (phonetic).

Mr. GEOGHEGAN. Yes.

Senator SIMON. Workers involved in the decision making. Is that something that we ought to be thinking about, encouraging through tax laws, mandating. Is this what we clearly need is a better labor/management climate in this country and at least in Germany, that has been very successful in helping to create that climate.

Mr. GEOGHEGAN. Senator, somewhat facetiously, I sometimes told my friends that the one thing I want the Clinton Administration to do is sign the Treaty of Mosterict and put into affect the social charter here. I think that as we move into an economy that is based less on quantity and price and more on quality and product innovation, and where every worker has to contribute, the social partners approach, which presumes a strong labor movement, because you can't have it without it and that's the fallacy of quality work circle sort of approaches, becomes more essential to our ability to compete and that we have to come up with a charter that makes people full citizens in this new world economy, Americans full citizens and that's the way to do it.

I think one approach, one way of getting into this is to experiment through Federal regulation now, have a few model cases. I was talking about TVA or Bonneville Power Administration or the Post Office or some other public corporations where we start experimenting with this approach.

The other aspect, way of getting into it is through procurement. Telling employers that we want to see some. That we're going to look favorably as a public policy upon employee participation

schemes. Not telling the corporations what they have to do, but saying you come up with something. It's not going to be a *sine quo non* but we'd like to see something and I think that there is a lot of misunderstanding in America about the so called postmodern period, postmodern economy that we're moving into. You see all the time as a cliché on the front page of the New York Times big companies are dinosaurs. We now have to have small companies, innovative, flexible, etc. But, if you look around this country, you see plenty of large organizations, General Electric, Xerox, Motorola, that are very large, but are not dinosaurs at all, that are flexible, that are innovative, that are very competitive and because they have these centralized sorts of management approaches, because they give employees a voice in producing and designing the products that they're involved in.

I think what is obsolete is authoritarian type management schemes or this notion of absolute management rights. That's what obsolete. That's what makes a small authoritarian firm is going to be more flexible than a large one but the real way that a firm ought to be governed is in a way that involves the employees directly in the production process as much as possible. Lester Thorau makes the point in his book, *Head to Head*, and that's one of the advantages that the Europeans have over us.

Senator SIMON. What about his suggestion about joining a labor union being a basic civil right. Any reaction to the three. I haven't heard this suggestion before, candidly.

Mr. BRESLIN. Well, certainly, if I may, Senator, I think it's an excellent suggestion. I think it is a basic civil right. I think it's a matter of freedoms. I think you should have the freedom to have representation in collective bargaining if you choose to do so. I think that's a basic freedom in this country.

Mr. TURNER. Without speaking to whether it should be part of the Civil Rights Act or not, because that I'd have to give some serious thought to. As I talked about in my presentation, when we look at the rights that we have in this country, you know, freedom of speech, freedom of religion, we seem to have a pretty strong case and pretty clear understanding of everyone in American about what those freedoms mean. But, then when you hit freedom of association, we suddenly hit a wall and really what does that mean? So, I think if we started defining the right to join a union as freedom of association, which is really essentially what that is, and started magnifying our rights in that area, that would be beneficial to everyone in the country.

Senator SIMON. Rich Walsh.

Mr. WALSH. I think I've heard you even talk about the notion of the role of the labor movement and what happens in totalitarian countries in which almost every instance, the first institution that's wiped out together with the churches is the labor movement. And it is one of the underpinnings of any democratic society and yet, we have had the irony, even in the last 12 years, of having our political leaders recognizing that importance in direct proportion to the distance from the United States.

Senator SIMON. Yeah, Poland.

Mr. WALSH. Right, absolutely. And yet coming back here and not only implementing policies of the opposite but encouraging employ-

ers to adopt the opposite policies, which have really led us, without law changes, and with a new interpretation or renewed interpretation of a U.S. Supreme Court decision have led us to the difficulty that we're having today.

Senator SIMON. Your suggestion on the NLRB and the General Counsel's office is one we will explore.

Mr. GEOGHEGAN. Yes.

Senator SIMON. It's very intriguing. You're a creative guy and I appreciate that. What about the suggestion he makes of making unions more democratic. Now, the majority of unions, at least my impressions are, would meet your standards. It would be a small minority that would not.

Mr. TURNER. Well, I, for one, think they are right now. I think there's a few exceptions to it, but I think if you look at the turnover in union leadership. I'm from a central body here in Chicago and I looked on the list of who's running that union, and who was running that union a few years ago. I mean, we've had probably a 50 percent turnover in the 6 years that I've been there of union leadership and then if we just go and look at major unions here in Chicago, many of which you're familiar, I mean, boy, we could just check off the list of new union leaders that we've had.

Now, I think that the thing to keep in mind, when you're dealing with this, is that when you look at the governing structure of unions, they tend to be tailored to fit a unique set of circumstances for that union and it's not always as initially as clear as it seems. For example, my home union is the teacher's union and I think we run one of the most democratic unions around. I mean, there's never been a hint of any kind of scandal or corruption and God only knows, you get 20,000 teachers together. I mean, you have to do this perfect, you know. But, we do not have direct election of president of the AFT and the reason we don't is that we feel that the mail ballot actually discriminates against people because what you tend to get in a mail ballot election is five or six percent return in terms of people who actually send the ballots back.

What we have is the delegates are elected from all over the United States on a proportional basis. They go to a convention every 2 years. The delegates, then the elected representatives of those people back home, sit and listen to speeches of the candidates. We have a whole morning of listening to speeches of the candidates and then people vote for those candidates. Now, I for one, do not think that that is a less democratic process than a direct mail ballot vote for electing of that leadership. But it's tailored for the teachers' union. Now, other unions tailor it to fit their individual set of circumstances. So, I think that there has to be some leeway here. Is the, for example, is a local, a local union that is just located in Chicago? Is it a local that's a ten State local? Is it a local like Ron Powell's. It's a statewide local. What are you supposed to do call everybody together in one big union meeting in Springfield and expect people from Evanston and, you know, Cairo to come to that one meeting. So, I think you have to look at this thing and have some sense of what's the size of the group and so on.

Senator SIMON. Mike.

Mr. BRESLIN. Senator, I couldn't agree with Don more but to further it, I think that there are no great long-terms in union elec-

tions today or when a union officer gets elected in a union today, there's no great long-term. They go through a very democratic process, in the building trades absolutely, as far as offices are concerned. I don't—I think that any kind of regulatory laws in that instance and believe me when I tell you, as far as labor is concerned, nobody hits the public eye like labor leaders right now or for the last 20 years. I mean, heavens for bid, if we, in fact, had organized the savings and loan industry, there's no telling where we'd be right now. You know, so I think we have a lot of laws right now that regulate our industry. I don't think we need anymore laws to curtail the progress of our industry right now.

My heavens, every time if somebody was dissatisfied and five percent of them got together and we had another union election, that may have cost some of these unions, that we have mail outs, \$1,000,000 or I don't want to say 1,000,000, \$100,000, it wouldn't take long before they wouldn't have any money in their treasury. They wouldn't be able to do the business that they're in business for.

Mr. TURNER. If the elections in the work place had the same set of rules applied to them that we have in union elections, we would certainly be a lot better off.

Senator SIMON. Rich.

Mr. WALSH. I think by and large, it's a solution in need of a problem. From the State Federation's perspective and with rare exceptions, the turnover on our State Federation Board averages about 6 years, 25 members on the Board. 50 to 60 percent are different five, 6 years later and from the local unions that belong to us, the 1,400 local unions that belong to us, as Don mentioned, the turnover is significant and in the last 10 years, one of the driving forces of that has actually been the economy. I mean, the economy has guaranteed democracy in the local union movement in Illinois and I assume throughout the rest of the country.

Senator SIMON. Tom Geoghegan, you obviously differ with their conclusions?

Mr. GEOGHEGAN. Yes, I do. And I think even within the AFL-CIO, you would never hear the testimony here, but there are many people at the staff level and the legal departments and its staff positions who do not believe that the AFL-CIO is democratic and one of the strongest reasons, one of the strongest reasons and people always ask me this and I cite the employer violations as vehemently or more vehemently than anyone on this panel, but one of the reasons for labor's decline is the labor leadership, which has lost touch with its membership, which does not present an effective case for labor law reform to the American public and partly because these people are not elected. Now, they come up through a system that is political and they come up through a delegate conventions system and there are many, many changes in office. I agree with Don, that there is often change in office, but there's no fundamental turnover in a party sense from one group to another. There's no requirement as a condition of holding your job that you appeal affectively to the membership.

Senator, you have to be elected directly. So do all your colleagues in the Senate. So do all your colleagues in the House. Why not the same requirement for the labor leadership? It is my view that per-

haps there would not be a wholesale turnover of existing current labor leadership if they had to run directly for election, but the people who survived it would be a different kind of leader than they are today. They would have to be more affective at communications skills, media skills, being in touch with their electorate, being flexible, using the media, for example, which no one in the labor movement seems to do now.

I really think that one of the reasons that we have hearings where—you know, I'm not that imaginative in terms of coming up with labor law reform. But one of the reasons is that the labor movement is not coming up with ideas and that's partly because there's stalled at the top. If there were no direct elections, there would be no Ron Carey, President of the Teamsters. There would be no Rich Trumpka, President of the Line Workers and those are the two people that you would be most likely to put on national television to make a case for labor. That's just a fact.

If we make labor, if we are going to talk about democracy in the work place, we can't have a vision of that democracy for the 21st century without having one for organized labor. My criticism of existing labor leadership is tepid compared to the criticism that a John L. Lewis would make if he were alive and on the earth today, compared to the criticism, in line with the criticism he made in the 1930's.

I strongly feel, with Don Turner and with everyone else on this panel, that Congress should not require direct rank and file elections, but if people want to have them, they ought to be able to get them and I think a procedure could be put in place where you have five or ten percent petition and if that referendum fails, then the next time, over some limited period of time, you have to have a much, much higher margin to get another one of these referendums. But it is just a fact, Senator, that there would be a protege of Jackie Pressor's sitting at the head of the Teamsters today if it weren't direct rank and file elections. Anybody who says otherwise is just not looking at the reality on the ground.

I'm strongly in favor of the labor movement but we've got to change.

Senator SIMON. I know all of you want to comment but I'm unfortunately going to have move along. Let me just make a few comments on the other, equal time on the work site that you mentioned, clearly it's change that we need in our legislation.

Mr. TURNER. I might add, Senator, as long as we're talking about equal time on the work site. If you look at decisions that talk about organizing within the retail sector, in particular, where unions, where we have large shopping centers, for example, and unions are restricted to staying outside the shopping center and in some cases, you're on a driveway a half a mile from the actual job site and trying to pass out literature to people. That's an absurd method of organizing. I mean, when the rest of the site is open to the public, so that's just one example of access. It's really a question of access to people in the work site.

Senator SIMON. One final point that you mentioned that I wish we had more time to go into, and that is the OSHA situation, where clearly we have a high rate of industrial accidents and construction accidents than other industrialized countries do. Where,

again, I think with some changes in procedures, we can have management and labor working together to improve that area.

Mr. TURNER. Senator, I'd just like to offer one comment on that that may shock you. Did you know that the leading cause of death for women in the work place is murder?

Senator SIMON. I did not know that. You'll have to—we're not in the position to explore that right now, but that's an interesting—we thank all four of you. I think we're talking about something that really is important to the future of our country and I thank you very, very much.

Our next panel is Kay Jones, associate administrator of the Illinois Nurses Association, Eugene Moats, president of the Service Employees Union, Local 25, Barbara Howard and Juanita Nagel, former building service workers at the Kluczynski Federal Building. Unless you have a preference, I'll start with Kay Jones over here, the Illinois Nurses Association. You've already heard the nurses talked about this morning and I'm pleased to say it looks like the Joliet situation is worked out. It hasn't been ratified yet.

Ms. JONES. We ratified it last night.

Senator SIMON. Oh, it was ratified last night. All right. Too bad Rick Walsh left here.

Ms. JONES. I just told him on his way out.

Senator SIMON. Oh, okay. All right.

STATEMENTS OF KAY JONES, ASSOCIATE ADMINISTRATOR, ILLINOIS NURSES ASSOCIATION; EUGENE MOATS, PRESIDENT, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 25, AFL-CIO, CLC; AND BARBARA HOWARD AND IVORY NORMAN, FORMER BUILDING SERVICE WORKERS, KLUCZYNSKI FEDERAL BUILDING

Ms. JONES. Well, Senator, I have been an associate administrator with the Illinois Nurses Association now for over 3 years. I've been with the Joliet nurses for two and a half years and we ratified our first contract last night ending the longest strike in Illinois nursing history, 60 days, total. The nurses struggle for union representation and a fair contract was long and unfortunately typical under the present conditions.

Labor law reform is sorely needed in this country to equalize the playing field between labor and management. The need for reform falls into two main categories, time limits and penalties for breaking the law. Under the time limits presently, crucial issues such as time spans between petitions for elections and the actual election can take 6 months to years and years. Blatant unfair labor practices charges can take as long as seven to 10 years to be resolved. The Illinois Nurses Association's campaign at St. Joseph Medical Center is a perfect example of how these laws not being in effect can affect real people.

As far as the time span goes, we had over 402 authorization card signed by nurses. We presented these to the hospital and with a request for voluntary recognition. In Canada, this would have meant immediate recognition for the union. In this country, it meant over 40 hours of hearings at the NLRB, extraordinary attorney's fees and arguments that approached the ridiculous.

The following were the three major issues in the hearing. No. 1, whether or not the INA is a union. Two days of testimony and questions on this issue, despite the fact that INA has been a recognized union in the State of Illinois since 1966 and represents over 7,000 nurses in collective bargaining agreements, 14 separate contracts.

The other issue, another issue was whether or not St. Joseph Medical Center was an acute care facility. This, despite the fact, that the hospital denoted as a level two trauma center by the Illinois Department of Public Health and has four separate intensive care units.

The third issue was whether or not on all our end bargaining unit was appropriate. Three days of testimony was spent on this subject, despite the fact that the U.S. Supreme Court decision in June of 1991 confirmed the NLRB's authority to designate which units were appropriate in health care, all RN units being one of those.

The hearings resulted in an order for an election on December 12, 1991. The total time spent in hearings and waiting for the Board's decision was 6 months. This time lag enabled the hospital to conduct a full fledged antiunion campaign. They hired two famous union busting firms, Modern Management, Incorporated and Management Science, Incorporated. These firms waged an all out campaign to stop the union and due to the 6 month wait for the election, heavily influenced the outcome of the election. The final vote was 318 in favor and 276 no's. The majority of those nurses who voted no and the number, almost 100 nurses that we lost, were definitely lost by terrible, terrible acts of intimidation. Daily being brought from their patients into the manager's office for an hour at a time being brainwashed about how terrible unions are and as the previous panel spoke, at the same time, I had no access to the premises at that time.

As far as the penalties for breaking the law, currently there is no deterrent that prevents management from committing unfair labor practices. Charges of surface bargaining, discrimination for union activity and management interference in freedom of choice can be filed and dragged on for 10 years or longer. The penalties for breaking the law are meaningless. For example, the common penalty for surface bargaining is a small tap on the hand and you're told go back to the bargaining table and bargain. This pathetic remedy is always a day late and a dollar short.

St. Joseph management practiced the surface bargaining for over 7 months. We spent a total of 30 hours just answering questions about our proposals. My favorite example of this and how ridiculous it was is on occasion we were asked what the INA's position on hermaphrodites was. Management did not give us any counter proposals for over 3 months at the bargaining table. Their strategy was to present proposals that were so much worse than the current practice that it took all of our strength and energy and all of the nurses fighting to just bring the contract up to some issues where current practice existed.

For example, their seniority proposal, placed nurses in the bargaining unit according to the alphabet. They did not move from

this proposal until we guarded heavy community support and the threat of a strike was imminent.

Current system of existing labor laws are unjust and they allow management to act illegally with impunity. I would suggest that the reform should focus on speeding up the NLRB proceedings. The Board should have the authority to hold hearings and testimony relevant to issues and reasonable time limits. Workers should be able to have a democratic and fairly conducted election as soon as possible.

Penalties for surface bargaining and other unfair labor practices should be more stringent and be decided upon in a timely manner. Workers should have the security of knowing that they cannot be permanently replaced during a strike.

As Richard Walsh said, that first contracts, his idea and your suggestion about the arbitration, I think you're a little bit familiar with our case, that what we had done was we had FMCS come in as Federal mediators after 3 months of bargaining and getting nowhere. Representative Jack McGuire from the State of Illinois came and we had him as an impartial observer and his comments the night before you came to Joliet. You missed his speech but he said this is what the FMCS does. They sit in the room and they say management is coming in now and then they say management is leaving now and then they say the union will speak now and that is all they can do. Their hands are totally tied. They can come to either side and talk but as far as actually mediating the process and helping the process along, they have no authority to do so and, as a matter of fact, are barred from doing anything meaningful. So, our next alternative was binding arbitration, of course. Because there is no impetus for management to agree to this, we were unable to get that and I think that that would be a very, very good way for us, this would have helped us a lot.

And after 14 years of pro-management government in this country, it's time the working people to get a fair deal. I urge this Congress and the new administration to even the labor playing field with legislation that allows justice to prevail in a timely manner.

For justice delayed is, indeed, justice denied.

Senator SIMON. Thank you, very, very, much.

Gene Moats.

Mr. MOATS. Yes, sir. Thank you, Senator.

I am Gene Moats and I'm president of Local 25 of the Service Employees' Union in Chicago and I'm also President of a State Council in Illinois, which has about 100,000 members, all of whom work in the service industries in public and private industries.

Before I begin my formal comments on the matter which I would bring before your subcommittee, Senator, I would like to just comment first that the two of my colleagues from the union here, Barbara Howard is our Chief Steward and she will be making a statement. The other lady that was to be here, today, Juanita Nagel, unfortunately, had an illness in her family and can't be here so Ivory Norman will make the—

Senator SIMON. I gathered that he was not Juanita. All right. OK.

Mr. MOATS. Right. We gathered that too. You said, get that sign up there real fast. But, I would comment just briefly on the Newly-

weds matter, which came up during Don Turner's comments. It's a typical, classical case of a newly organized plant almost a year now, three union activists were fired. We finally got the Board, National Labor Relations Board almost reluctantly ruling that they were fired for union activities but it's a long process and we don't expect that with what is available to us from the National Labor Relations Board, frankly, to get it resolved in the near future. We have had to resort to community action groups to going to the various communities that have interest, that have workers in those plants and here again, these are areas, as your other panel commented on, need to have this process speeded up. I personally, I think, in this case, would like to see some kind of binding arbitration or last and best offer approach, something that would be within some reasonable period of time.

I would like to start off thanking you, Senator, for allowing us to testify today in your continuing leadership in matters that are vital to service workers. Our membership includes both public and private sector and workers employed by private employers performing government contracts and that's the matter which I'd like to bring before your committee today to talk to you about a terrible, terrible tragedy that has occurred in this city on December 1st and I'm going to refer to some of the people that are here today to ask you to look at their plight and, hopefully, help us.

With the growth of contracting by government at all levels, the category of workers that perform, that are private, work for private employers performing government contracts number in the millions. When the Federal government contracts for services, the 1965 Service Contract Act sets minimum standards that contractors and agencies must comply with. The law covers about 800,000 workers. Our union is concerned that Federal procurement policies are interfering with the right of these workers to bargain collectively as well as their enjoyment of Service Contract Act protection.

Today, I'd like to focus on the problems faced by our members who work for janitorial contractors cleaning Federal office buildings. Most of these facilities are managed by the General Services Administration, which contracts for janitorial and other services. On the first of December last year, 70 workers were thrown out on the street when their employer, a janitorial contractor, lost the cleaning contract at the Kluczynski Federal Complex here in Chicago.

The General Services Administration awarded the contract to a contractor well known to be antiunion and who refused to rehire or even to interview any of the incumbent work force. Many of them are here today and to look at their faces, people that have worked in that complex for 15 and 18 and 20 years were not even given the dignity of being interviewed by the incoming contractor.

The GSA awarded the contract to a contractor that was well known to be antiunion and we have submitted written statements that provide some of the details. The same company had a track record at Great Lakes Naval Training Station, at the Air Force Unit at O'Hare Field. With the same results in each case, refusing even to interview the employees and we'll get into why in just a moment.

Unfortunately, this is not an isolated incident just here in Illinois. Locals of the Service Employees around the country have reported similar instances of abuse by the GSA and other agencies as well. Two years ago at GSA's Headquarters Building in Washington, DC., the new contractor refused to hire any of the 25 workers employed there. Since the union was thrown out, wages have dropped by 40 percent in Washington, DC. at the GSA Headquarters Building.

In Birmingham, Alabama a new contractor recently took over at the Vance Federal Building and refused to rehire any of the 46 union workers and I could go on with dozens and dozens of examples of this that happened on an ongoing and continuing basis.

These action fly in the face of the basic purpose of the Service Contract Act. Congress passed the law with the intention of improving the wages, benefits and job security of service contract workers. It is supposed to ensure that Federal service contracts do not depress local labor markets and that workers who are, in effect, indirectly employed by the Federal Government through private contractors are paid a livable wage and benefit package. In 1972, the Service Contract Act was amended to make certain that Federal Service Contract workers are able to exercise their right to bargain collectively. Section 4C requires that where a union agreement exists, all bidders must use the wages and benefits in the agreement when preparing their bids. Absent section 4C, service contract workers would be unable to unionize effectively. Unfortunately, the law contains the loop hole that the GSA has driven a truck through.

The Service Contract Act requires that if a new contractor rehires a worker, the worker's seniority at the work site must be recognized and the new employer must pay accrued benefits. The terms in the Service Contract Act, specifically, talk about accrued benefits and says that this must be observed by any contractor bidding on the job. Accrued benefits, by and large, are vacations. People that have ten and 15 and 20 years of service, have two three, 4 weeks of vacation coming. The amount of difference between hiring and rehiring the employees then becomes a very significant factor in the whole bidding process.

Nothing in the current law, unfortunately, requires the new contractor to rehire any of the predecessor employees contract, a contractor's employees, and this means that a new contractor can underbid an incumbent contractor, by submitting a bid that assumes none of the existing work force will be rehired. Thus, the new contractors bid will be lower than the incumbent's bid by the amount of the accrued seniority related benefits like vacations.

Just because they were entitled to more vacation after their first year of employment, something most American workers take for granted, these local 25 members lost their jobs. When it accepts a bid like this, the General Services Administration is well aware that it means dumping the incumbent work force. GSA is sending a very clear signal to service contractor employees. If you dare to join the union, we'll make sure you lose your jobs by bringing in a contractor who won't rehire you once you've started accruing benefits.

Under Department of Labor procedures, the replacement workers receive a current union wage absent those vacations because the new employees, so they don't have to pay them any vacations, for only 1 year. Then next December 1st, this year, the compensation of the employees that were brought in will drop by more than \$2. It's a union busting and wage busting and it's clearly contrary to the spirit of the Service Contract Act. It is further a deterrent, to every building in Chicago that pays the full union scale. So that the purposes of the Service Contract Act are turned 180 degrees away from what the real purpose of the Congress passing the law.

We believe that the Federal Government should act as a model by requiring new contractors to rehire the predecessor's workers for a probationary period. In this way, the Federal Government can provide the kind of job security for contractor employees that the Service Contract Act intended. And it's interesting, Senator, that when the General Services Administration contracts out work that it's doing itself in the service sector and they do hire their own janitors. As an example, in the Dirksen Building there are some sections that are cleaned by direct GSA employees. When they put that out for bid in case they want to go to private contracting to replace the work done by GSA employees. What do you think they do? They require the incoming private contractor to give the right of first refusal to the GSA employees and that I think is what we're asking for. That the employees in the private sector should be treated exactly the same way that they're treated in the public sector. What GSA is doing to service contract workers around the country belongs in the anti-worker policies of the past. President Clinton has a new economic plan designed to promote good jobs, with good wages, health care benefits, pensions, all of which all of these people received prior to this terrible act on the part of the General Services Administration.

We have gone to every government agency, gone to GSA, gone to the Small Business Administration. This was a section 8A set aside as was the previous series of contractors that have been in that building for many years. We've gone to the Wage and Hour Division of the Department of Labor, and the National Labor Relations Board, all without any kind of response. We are going to file with your committee some of the letters that we have received and that other members of the Congress in Illinois have received. Some, I know, that you have even received. The letters uniformly say the same thing. We don't have anything to do with people. We deal with companies. We award a company a contract. It's up to the company to decide if they want to hire people or not hire people.

In fact, one of the letters, responses from the GSA said if we were to dare to suggest to the company that as a requirement in order to meet the Service Contract Act requirements that they must offer the right of first refusal to incumbent employees of the previous contractor, that that new contractor might sue us. It is so ludicrous on its face that it's, you know. Here's the customer, the government inviting in somebody from the outside to come in and clean their building and they can't say these are one of the requirements. Of course, they can and they do it with their own employees, which I emphasize, when they contract out work done by direct GSA employees. They have all kinds of conditions on these bids.

How many buckets and mops and brooms and people and uniforms and all of these other things. But here, they don't want to put people first.

A lot of the people that have lost their jobs are here today, as I said before. I'd like you and I know you have look at them and here are people that have devoted a good part of their adult lives to cleaning Federal properties, doing the right thing, working hard, playing by the rules as President Clinton said, and then along comes a mindless heartless government program that says we don't have anything to do with people. We only deal with companies. We are asking through you, Senator Simon, to help us to close that loophole that GSA has used to exploit and prevent Federal agencies from treating blue collar service workers like disposable cups. I'm confident that through your efforts, building service workers, serve the Federal government and from private companies, will win fair and the kind of treatment that they deserve.

We would like to borrow from President Clinton's campaign theme. It's time to put people first, again, not companies, and that's what we're asking of you and I thank you for listening to my statement.

Senator SIMON. We thank you.

Barbara Howard, please hear from you.

Ms. HOWARD. OK. Thank you.

My name is Barbara Howard. I used to be a janitor in the Kluczynski before fired. I had 15 years of experience at the Federal Building doing everything from vacuuming offices to cleaning toilets. My job was definitely not glammers, but I worked hard for 10.40 an hour. It was not easy getting on such wages, especially trying to raise three children. But it was heaven compared to trying to make ends meet.

OK. December the 1st, we all, well, throughout the building it was 70 of us. I worked, some of the peoples had been in there from before it was union up until 1992, of November 31st. It's hard to get now what we were making, the 10.40. It's even worse trying to get by on unemployment. We don't have any union health benefits now, as far as medical. The union has provided us with emergency care, but how long can that last? We shouldn't even have to be accepting, you know, things like that.

The only thing we were guilty of is trying to work. We've serviced that building. We were experienced for more than 19 years and then all of a sudden. And then the thing about it, was the lady signed the contract in September. We didn't know we didn't have jobs until November 31st. They didn't even have the decency enough to tell us that we weren't going to have jobs. They didn't offer us applications. We went down and asked for applications. We filled them out. She didn't even interview us, you know.

Some of the people here are one family members, the mothers are being husband and, you know, trying to run a family. We based our income on our job. Now, we don't have any jobs. We've been picketing. Most of us is sick. We can get emergency help from the union, but we don't have any union benefits of our own, like medical. A lot of people that would be here today, they're not here because of the picketing and the cold, but we're fighters. We're not

planning to give up. We're asking for any help that we possibly can get, because we would like to have our jobs back.

Thank you, very much.

Senator SIMON. I thank you.

Mr. NORMAN.

Mr. NORMAN. Good morning, Senator Simon, as you know I didn't have a speech prepared. I wasn't scheduled to do this.

Senator SIMON. That's all right. Just tell your story.

Mr. NORMAN. OK. My name is Ivory Norman. I'm a decorated Vietnam Vet. I started service in the Kluczynski Federal Building in 1974, which is 20 years ago. I worked hard. I've raised, pretty much raised a family and because of my union affiliation, I think I was thrown out last December 1st and only for that reason.

The tenants are sympathetic and we've had lots of letters from them and there's support coming from all the tenants of the building, but like they say, you know, there's not really anything that they can do. But I feel that a great injustice has been done to us for just this reason. I've accrued all the seniority. I had a 4 week vacation planned and all this was just taken away. I mean, I've given something like 20 years of my productive life to cleaning just this one Federal Building and to just come along, a contractor come along and just throw me and all these other 70 people out is truly wrong and my colleagues have pretty much expressed my views and the views of all of all the people in this room and we're here this morning to ask you to take our fight to Congress and to the President, if necessary, to right this injustice.

I thank you.

Senator SIMON. I thank you and let me add, my long time friend, Gene Moats, contacted me, I guess it was early December.

Mr. MOATS. Yes.

Senator SIMON. Right after this happened and we've been trying to help but so far without any, you know, any luck. Ms. Howard mentioned she gets \$10.40 or was getting \$10.40 an hour.

Mr. NORMAN, what were you making?

Mr. NORMAN. It's the same scale.

Senator SIMON. Same scale for everybody?

Mr. NORMAN. Yes.

Senator SIMON. And what are you doing now, Ms. Howard?

Ms. HOWARD. Walking the picket line again, unemployment.

Senator SIMON. Yeah. And?

Mr. NORMAN. Walking the picket line in the cold.

Senator SIMON. In the cold. And so, in fact, the Federal government and State governments lose money because we end up paying unemployment compensation in this kind of a situation, is that correct?

Ms. HOWARD. Right.

Mr. NORMAN. This is true.

Senator SIMON. And you mentioned health care benefits. You had those before when you were on the job?

Ms. HOWARD. Right?

Senator SIMON. And do either of you have any children?

Mr. NORMAN. Yes.

Ms. HOWARD. All of us.

Senator SIMON. Well, how many children do you have?

Ms. HOWARD. Three.

Senator SIMON. Three children and they're how old?

Ms. HOWARD. Well, most of mine are grown. I have one that's a minor.

Senator SIMON. You're older than you look. All right.

Ms. HOWARD. Most of the people that work with me have small children.

Senator SIMON. Small children.

Ms. HOWARD. We have one lady has six.

Senator SIMON. And for them, and for you, Mr. Norman, you have how many children?

Mr. NORMAN. Two.

Senator SIMON. Two, how old?

Mr. NORMAN. One is of minor age. He's under 18.

Senator SIMON. Yeah, yeah.

Mr. NORMAN. So I still have to take care of that one.

Senator SIMON. And what it means is not only you have lost health care but your family has.

Ms. HOWARD. Right. Right.

Senator SIMON. Have lost health care coverage in this situation.

Ms. HOWARD. And we have some people, Senator, that have heart problems.

Senator SIMON. Yes.

Ms. HOWARD. Diabetes, all of these things, but as long as we had the union, and we were on our job, we had these things. We could cover but now we don't have anything.

Senator SIMON. Yeah.

Ms. HOWARD. Nothing.

Senator SIMON. And if I may ask you, Gene Moats, what is the new contractor paying per hour? Is it \$10.40?

Mr. MOATS. We can't find out, frankly. The GSA is very difficult to deal with on these matters. We are told that they have some kind of health care policy but the enforcement provisions really allow them to buy the cheapest. Our policy, our Local 25 health care system, is a complete health care system for dependents and everyone. We own our own outpatient hospital and have four satellite clinics, but under this requirement of the Service Contract Act is that they must meet all of these union levels of benefits including health care and pension and all of the things. The enforcement of that is almost nil. If they buy the cheapest policy from some company that's unknown in the general insurance field, the GSA accepts them.

Senator SIMON. So part of the problem.

Mr. MOATS. So, we have no knowledge really and it would be one of the things we would hope your committee can determine. We have asked under the Freedom of Information Act, for some of this information and we haven't been able to receive it.

Senator SIMON. Yeah, we have to follow through on that. So, part of the problem is not simply the regulations and the law but the enforcement of the regulations?

Mr. MOATS. Part of it's enforcement of the Service Contract Act. Other than the loophole of not requiring the right of first refusal, supposedly requires union related benefits if there is a union contract in place. That was the amendment that I talked about before.

But in actual practice, we learned as, an example, that the same company at Great Lakes didn't pay any health and welfare or pension benefits at all to people. We reported that to the Wage and Hour Division of the U.S. Department of Labor. A year later, we learned that they were satisfied that the payment had been made. We've never been able to find out if there was ever a payment really made.

Senator SIMON. Did they write to you at all?

Mr. MOATS. They would show us and we have applied under freedom of information. We just learned some of these things and we will share this information with your committee or you may want to ask some of these agencies for direct information.

Senator SIMON. And what was the difference in the bid in terms of dollars that were?

Mr. MOATS. The bids reflected the assumption that they wouldn't have to hire the people and when you talk about long-term people, like these with three and 4 week vacations, it's a very significant amount of money.

Senator SIMON. Vacations, yeah, yeah.

Mr. MOATS. And the GSA has every incentive to try to break the union cycle in order to bring their costs down and they do it.

Senator SIMON. And when you suggest require of new contractors that they retain people, at least for a probationary period, what kind of a probationary period are you talking about?

Mr. MOATS. Well, I don't think, we have just cause clauses in our contracts and if somebody is not performing their job, the employer obviously has rights.

Senator SIMON. Yes.

Mr. MOATS. We want the same thing that GSA has in its own regulations, which they require a private contractor coming in to do this same kind of work replacing GSA workers to offer the right of first refusal to the GSA workers. And I don't think they require probationary periods or anything else. They just say, you must offer the right of first refusal.

Senator SIMON. Do you happen to know, can this be done with an Executive order or does this require statutory change?

Mr. MOATS. We think, our attorneys in Washington, feel that it can be done by the Administrator of the General Services Administration. We don't think that the Secretary of Labor can do it. It could be done by Executive order, or it may be more simply, could be done really by the Administrator in Washington, DC. of the General Services Administration.

Senator SIMON. You mentioned something and I jotted down some kind of 40 percent figure connection?

Mr. MOATS. Yes, the wages in Washington, DC., at the GSA Headquarters over the past several years, because of the replacement by the contractors. Yeah. Two years ago at GSA's Headquarters Building in Washington, DC., the new contractor refused to hire any of the 25 workers employed there. Since the union was thrown out, wages have dropped by 40 percent.

Senator SIMON. All right. Well, we will try. I would love to sit here and tell you we're going to get something done for you tomorrow. Unfortunately, I can't promise that. We're going to follow through and see and, frankly, to protect other workers in the fu-

ture. Your situation is a little more complicated because the contract's already been issued, but let me see what we can do and I really appreciate your being here.

Mr. MOATS. I would suggest, Senator, in order to relief everybody's minds here a little and we've talked through with our legal department, if the GSA promulgates a rule that a contractor coming in to this kind of situation in order to meet the requirements of the Service Contract Act, the accruing benefits portion, must offer the right of first refusal to the most senior employees of previous contractors, if it's plural. These people will all be saved.

Senator SIMON. Yeah. All right. I will work with you and we'll see what we can do.

Mr. MOATS. We will make available some of the responses we've had from government agencies, which we feel need addressing.

Senator SIMON. All right. Ms. Jones, you mentioned among other things, attorney fees, which obviously are on both sides in your dispute there in Joliet as well as consulting firms. Do you have any, just ballpark idea of how much money was spent on all of that?

Ms. JONES. Well, I know that we can't afford large attorney fees, so we try to do as minimal as we can. The hospital has unlimited fees and there was an article that we had that the attorneys that they used are the highest paid union lawyers in the country. So I would guess to believe that they are probably paying them \$400 an hour, to be at all of these hearings, to be at all and it's in the attorney's best interest to keep these contract negotiations going on forever.

Senator SIMON. But in any event, what happened was because the law wasn't clear in who was supposed to do what, we ended up with a great deal of expenditure that isn't helping patients, isn't helping nurses, isn't helping hospital administration, isn't helping anyone.

Ms. JONES. Well, my frustration was that this was allowed to go on for 6 days, six full days at the NLRB, this ridiculous testimony on a law that the U.S. Supreme Court had just decided on. Why was that allowed to go on? I don't know and we never were able to get that question answered.

Senator SIMON. You heard testimony here and I think you made reference yourself to the fact in Canada if a majority of workers sign a card, then that automatically—there is automatic recognition of the bargaining unit. If we were to pass a law even making that 55 percent or 60 percent signing the card, so you would have to have a clear majority and anyone would have 30 days to suggest there was fraud or contest it and then a decision had to be made in another 30 days. So that the whole process at the most could take 60 days, would that be an improvement? If I may ask the small question to Gene Moats, would that be an improvement in it?

Ms. JONES. Definitely. Definitely, because it would have given—this administration was totally not prepared. They kept denying. The nurses kept going to them with problems. So they were totally ignoring them. It was only the 6 month delay that gave them the chance to do this total antiunion campaign. If they didn't have that chance, they wouldn't have.

Mr. MOATS. Yeah, I certainly would agree with that, Senator. The idea that workers have to be treated differently than other citizens when it comes to signing a contract is ludicrous on its face. If I go to a store and run up a big bill and sign a contract to pay for the bill, I don't get to vote later on, whether I'm going to pay the bill or not. It's the same with any contract. When you sign a contract, as long as it's above board, not fraudulent or anything like that, you're bound by that contract. And when a worker elects to become a member of a union, he or she signs a contract and says I want the union to represent me. That should be enough. That's what they do in Canada. That's what they do in most European countries and I believe that that's what should be done here.

Senator SIMON. The other point you mentioned was mentioned in earlier testimony also is the equal access for both sides on the job.

Ms. JONES. Right.

Senator SIMON. If someone wants to talk to the workers for an hour on management side, that's fine. You ought to also have the hour on the other side. And then, finally, if I may ask both of you, again, some kind of binding arbitration, after a certain period of time, on a first time contract. Do you favor that?

Ms. JONES. Yes, definitely.

Mr. MOATS. I do, too. I know some of my colleagues here have some hesitancy. We've always, in the old days, we always preferred to bargain out our contracts, take our chances, hit the picket line. In other words, to make it a more direct union function than to turn it over to a third party. I think that the bias that we've seen in this process over this last decade has really convinced me that there has to be some starting point to labor/management relations. If we, at least, have a first contract I think we have a better chance than to have better labor relations in the future.

Senator SIMON. Great. We thank you.

Ms. Howard, Mr. Norman, we thank you also for your coming here and testifying and let me just add my thanks to all the other members of the Local who face this very difficult situation. We appreciate your taking time to come here and let your story be known, because my hope is—my hope is we can help you, but also help a great many others throughout the Nation who face these kinds of problems.

Ms. HOWARD. We appreciate your taking the time in listening to us and we hope that you can help us. [Applause.]

Senator SIMON. We will now receive a statement for the record by Ms. Nagle.

[The prepared statement of Ms. Nagle follows:]

PREPARED STATEMENT OF JUANITA NAGLE, CLEANING WORKER

Before I begin, I would like to thank Senator Simon and the organizers of this hearing for the opportunity to speak before them. My name is Juanita Nagle, up until last December, I worked as cleaning worker on the 23rd floor of the Kluczynski Federal Building. I worked there for 5 years before being fired.

I do not understand my firing—if I had not done a good job cleaning my floor, or broken a rule, I could understand why I might be fired. But what did I, and my 70 co-workers, do wrong? I worked hard at my job, and like to think I did a good job. I know most people would not consider my job to be very important, but it was important to me, and it was very important to my children, and I hope, to the people in the offices I cleaned.

Yet I sit here unemployed, trying to figure out what I did wrong, and how I am going to continue to provide for my family. My unemployment check doesn't go very far, and will soon be running out anyways. I imagine many of my co-workers are in the same situation—it is just not right.

Sometimes, as I carry my picket sign around the building, and the cold wind makes my eyes tear, I wonder if the government, or anyone else, really cares about me, or my kids—and then my eyes tear a little more.

I don't blame you Senator, or anyone on this panel. But I ask you, what do I tell my children when they ask me, "Mommy, what did you do to make them mad at you?"—What do I tell my children?

The members I represent are young and old, predominantly Hispanic-American and African-American, senior employees with up to 20 years of seniority, with one common quality—the ability to dedicate their service to cleaning the Federal Building. The cleaning required dedicated service—in floor maintenance, snow removal, and countless other tasks which resulted in the loyal inter-personal relationships with a majority of Federal Government tenants.

Many of our members are about to lose their homes due to the failure of making mortgage payments. Some of our members face homelessness due to these harsh economic factors.

Some members must make the daily choices concerning life's necessities—food, medicine, clothing, residence, health care, and child care. All of these pressures lead to common questions all of us affected employees ask: Why did this happen to us, when we were so appreciated by the Federal Building tenants? Is it fair for one person, Mary McFarland, to make a lot of money at the expense of our jobs?

Please Senator Simon, on behalf of all the people, find a way to put us back to work, and offer us the "right of first refusal" to protect our jobs so this injustice will never happen again. Thank you.

Senator SIMON. Our final panel, Sally Jackson, the new president and CEO of the Illinois State Chamber of Commerce, James Baird the attorney at law and Brian Bulger, attorney at law. We thank you for being here and I understand, Ms. Jackson, you're going to testify and the other two will add comments during the question period and we go from there.

Ms. JACKSON. That's right, Senator.

Senator SIMON. All right.

STATEMENT OF SALLY A. JACKSON, PRESIDENT AND CEO, ILLINOIS STATE CHAMBER OF COMMERCE; ACCOMPANIED BY JAMES BAIRD, ATTORNEY AT LAW, AND BRIAN BULGER, ATTORNEY AT LAW

Ms. JACKSON. Senator, as the president of the Illinois Chamber of Commerce, I have a keen interest in the issues of competitiveness and productivity for our members here in the State of Illinois and I have a personal interest because of my work through my entire career dealing with the work force of Illinois, the workers themselves directly and the employers here in our State. And I want you to know that we have prepared written testimony for you that will give you all of the details and some of the documentation that I'll reference.

Senator SIMON. Great. And we will enter your full statement in the record.

Ms. JACKSON. Very good. I also wish to clarify that I have collaborated with the other large business group here in Illinois, the Illinois Manufacturers Association, in the preparation of the testimony and they have asked me to represent them as well, here today in the testimony. We are in fact, the State's largest business organization. We represent 7,000 member companies throughout Illinois, large companies, small, union and nonunion. We see a great diversity in wages and conditions of employment throughout the

State, geography playing a significant factor for us here in Illinois and we, in our testimony today, are going to be looking at data and some specific examples that we believe reflect on the issues of productivity and competitiveness here in our State.

You've heard from various union officials and some members of academia in your hearings so far emphatically stating that low union membership ties directly to lower standards of living, lower productivity and lower competitiveness and there seems to be blame for this laid with management, claiming that unfair antiunion tactics are the main source of unions troubles. In response, we are urging caution by you and your committee. Our experience here in Illinois and the empirical research that we will be presenting today strongly suggest that the premises, the evidence and solutions presented by the proponents of the view you have heard, so far, are, in fact, wrong. We believe that any precipitous action that may be taken, in a short period of time, would allow more decline in productivity and competitiveness.

And allow us to present for you here today, a few facts I would like for you to consider. As you recognized in the opening statement that you presented, started the series of hearings, the causes of the decline in union membership are in fact very complex and relate to a number of factors in our economy.

You presented a chart that showed 13 nations and comparisons across those countries. And we noted in that chart that only three of the 13 nations, in fact, had both higher rates of unionization and higher wages than the United States, West Germany, Switzerland, and Sweden, were those three countries. Eight of the countries had higher rates of unionization, but they also had significantly lower hourly rates of compensation and in Brazil, where 50 percent of the work force was unionized, the hourly compensation averaged \$1.49.

So there are significant difference and we believe the simple fact is that there is no causal nexus from this data to indicate declining unionization and declining living standards are linked.

A better approach, we believe, is to look at productivity and as I mentioned we are keenly concerned about productivity issues and increased productivity factors.

On March 10th, this year, the Associated Press reported that the Labor Department's statistics showed 1992's productivity gain was the largest in over two decades here in our country. Productivity rose 2.8 percent last year, the best improvement since a 3.1 percent improvement back in 1972.

Perhaps not coincidentally, 1992 was the year in which unions hit their lowest percentage of representation since the passage of the Wagner Act.

Of course, some may argue that the productivity gain is unrelated to union decline, but the figures suggest that caution is called for before Congress makes any changes, particularly changes which may reverse productivity, in addition to addressing union declines.

Anecdotal experience of our members also suggest that productivity gains are sometimes best achieved in a nonunion setting as I said early, we represent union and nonunion companies and we do have a lot of anecdotal information in both settings. Motorola, headquartered here in Illinois in Schaumburg and recognized as

world class competitor in the electronics industry, is predominantly union free, as a company.

In the last few years, Motorola has seen a 100 percent productivity improvement. They've received the Baldrige award along with many others for the quality of their products and they've also won awards from the Department of Labor for commitment to affirmative action and diversity, also two important issues for our work force. And they've achieved this standing while being most union free.

You've raised the question of diversity in your opening statement as well. Often unions fail to involve women and minorities in their practices. Indeed, here in Chicago, the papers have recently been full of the police union's efforts to block an affirmative action clause in the contract. Old habits do die hard, sometimes.

One final point on productivity involves a comparison between ourselves and our major trading partners. In American, in the New Economy published by the American Society for Training and Development in the Department of Labor, the 1989 comparison showed American productivity as greater than that of 13 other nations, including Canada, Japan, West Germany.

And all these countries, except Korea, are more heavily unionized than we are and yet none of them has matched our productivity and I think that that has been well documented over the years. We have brought a chart that summarizes that data and you can see that the United States productivity is clearly.

Senator SIMON. And we will enter the chart in the record.

Ms. JACKSON. Very good.

Senator SIMON. I'll let the experts figure out how you enter that into the record.

Ms. JACKSON. I think we have one up there already. Again, these productivity figures suggest that the Congress must carefully weigh the impact of changes on legislatively mandated issues impacting our work force, because they will be there.

We turn now to the causes of the decline in unionization, as we see them. It's not the case, we believe, or as believed by some union adherence that the United States is unique in declining unionization. Professor Leo Troy of Rutgers University has determined that unionization in the private sectors of Canada and Western Europe has also declined.

Professor Troy and others traced that decline to significant structural changes in the labor market and there have been many, many changes. Prior witnesses have focused on what they consider to be pervasive delays instituted by management. Rather than blaming management or the NLRB, perhaps the unions need to look inward at some of these changes, the structural changes that have occurred.

We believe that evidence shows that management is less likely to delay an NLRB election in the 1990 than they were in the 1970's. We have analyzed data and we'd like to share that with you. Appendix A in our testimony, provides a chart compiled from figures contained in official NLRB annual reports from the period of 1975 through 1990.

In 1975, only about one in every five representation cases involved the potential for management delay testified to by union witnesses.

If the thesis of those witnesses arguing management delay as the cause of union decline is correct, one would expect to see more hearings and fewer stipulations throughout the 1980's and yet just the opposite is true in the comprehensive data. From 1975 through 1990, the number of hearings steadily declined.

The 1990 figures show 82.8 percent of elections were conducted by stipulation, while only 15.7 percent involved a hearing.

Clearly, these comprehensive figures demonstrate there is no pervasive management practice of delay by utilizing NLRB processes to challenge election petitions and I'd refer your attention to our appendix B, again prepared with an NLRB data from annual reports. Here we chart the numbers and percentage of election challenges and objections. The chart shows that over the years from 1975 to 1990, the rates have remained fairly steady. Only 15.4 percent of the elections were affected.

Once again, the available statistical evidence fails to support the union theory of massive employer delays assisted by NLRB processes which cause delay.

We believe that if we look at NLRB election statistics the issue will be illustrated further. For purpose of examination, we've provided for the Committee, election data, comparing a 12 month period, from 1981, calendar year 1981, 1982, with a similar period 10 years later in our Appendix C.

Mr. BAIRD. One moment. That wouldn't be a calendar year. As it turns out, it's a 12 month period used by NLRB statistics.

Senator SIMON. Twelve month period, okay.

Ms. JACKSON. OK. Their year.

Mr. BAIRD. Their year.

Ms. JACKSON. OK. Excuse me.

What this data indicates is that the percentage of union elections victories has increased but the raw number of union elections has decreased a full 25 percent. So we're seeing fewer in number, but in a percentage, we're seeing more victories by unions in their petitions.

In the union's case over the past 10 years, they have not spent time, effort and manpower investing in organizing campaigns in order to grow. We offer data to support this statement. The Bureau of National Affairs pined that during the period of 1973 through 1988, 44 percent of the dropping unionization was attributable to the reduction in size of union establishments. 43 percent was attributable to the growth of the nonunion sectors and 13 percent was due to the decline in union organizing. The fact is that union organizing expenditures have declined by over 30 percent per non-union worker. And again, this is data that we have reference, publicly referenced data.

Another factor in unions decline has been their very success in the political process. The United States now has legislated at all levels, Federal and State, an extensive system of job benefits and protection seen in the Fair Labor Standards Act, Civil Rights Acts of 64 and 1991, the Age Discrimination and Employment Act, the New Family Leave Act to name but a few. These laws and their

counterparts in every State to a large extent have usurped many of the traditional roles of labor unions.

Our Appendix D, is an attempt to provide a graphic example of this phenomenon. It consists of a chart prepared at the U.S. EEOC, analyzing the types of charges filed with the Commission under the New Americans With Disabilities Act, since it became effective in July 1992. And you can see almost half of the charges pertain to the issue of discharge. The point of this chart is that it demonstrates that the EEOC is being used to resolve employee grievances, just as collective bargaining grievance procedures do. The fact is that our country's concern and protection of individual rights had greatly lowered the need for protecting individuals through collective action and these protection themselves are another major factor, we believe, in the decline of unionization.

Overwhelming evidence exists that two major factors in the decline of unions are structural changes in the economy, first and foremost, the unions lacking of organization and diversity, resistance to change, and the widespread legislative protection of employees we now see.

Let us examine some of the solutions proposed by the union supporters to the nonexistent problems that they have presented. We must point out, at the outset, that the union proposals would overturn NLRB election law which has been virtually unchanged since 1935 and which has provided a great deal of stability during that period. More importantly, these proposals are antithetical to the very bedrock of American democracy, the secret ballot and an informed electorate.

The greatest protection which a worker has against discrimination or intimidation in a union organizing campaign is the secret ballot. Look for a moment to the basic rights and responsibilities and needs of America's workers everywhere. These workers now have the right to vote by secret ballot for their Local, State, Federal political officials including their Senators and Congressional Representatives. They now have the right to vote in secret whether or not they want collective bargaining and union representation at their work place.

It would be in our opinion, a very serious and sinister step, indeed, this most basic of American rights would be removed for today's American worker.

If in the marketplace of ideas, today's American workers who are more educated and more independent than their predecessors, vote against union representation more than half of the time, there are seemingly two logical paths with which the union movement can follow now. Like a losing politician or an incumbent who has barely prevailed in an election, they can work to improve their product. They can improve their service, their image, improve their own neighborhood, in order to appeal to more voters the next time around and be more responsive to the members that they seek to represent or they can simply try to get the rules changed to eliminate the need for a secret ballot in the first place.

In our view, America's workers should not now be deprived of their important rights to vote and this committee should not be party to such shenanigans. It's a grave concern.

We all know that the union card check process is riddled with flaws. At its most basic, how many of us have bought cookies or raffle tickets at work, at home, or at the store when we really didn't want to do so, because we were afraid we'd offend a coworker or a neighbor. Virtually all of us have been placed in this situation and we've succumbed.

Can you imagine how much greater the pressure is to sign a union card?

A number of Courts and commentators have agreed with this basic truism. The Fourth Circuit Court of Appeals has observed in the NLRB versus S.S. Logan Packing Company quote, "It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a card check, unless it was an employer's request for an open show of hands. The one is no more reliable than the other."

We've had numerous examples right here in Illinois of the unreliability of union authorizing cards. Testimony was recently given in an NLRB case involving two unions contesting the right to represent employees. Witness after witness testified under oath, that they did not know what they were signing, when they signed the union cards and here's a typical exchange from the record. One employee stated—

Senator SIMON. And where is this?

Ms. JACKSON. This is in an NLRB hearing here involving a recent case in Illinois, two unions contesting the right to represent workers.

Senator SIMON. OK.

Ms. JACKSON. And we can give you the specific case if you would like.

Senator SIMON. No, I just want to get the general background.

Ms. JACKSON. Right. Right.

One employee stated, "They (the union) passed out the cards. They said sign these." And this is a quote from the transcript, "They said sign these cards. When you turn them in you'll get a hat and a pin and whatever else it is that they gave us." The question, "And you read it, didn't you?" The answer, "Right. I read the card." The question, "Is it your testimony that you signed a card because you were going to get a hat and a pin?" The answer, "No, I mean, I just signed the card because everybody else was signing the cards and we were under the impression we already had a union."

We have many other similar quotes from the record and they will be entered as a part of our testimony.

In the 1960's the NLRB announced one of its most sensible rules. That is that neither side to the election could exert undo last minute influence over a voting employee prior to the employee's expressing his preference on the issue of unionization. Significantly, the United States U.S. Supreme Court recently cited this very NLRB rule with approval in an important political election case, in upholding the State of Tennessee's rule prohibiting access to areas in and around polling places in the face of First Amendment free speech challenge in *Berson versus Freeman*.

The U.S. Supreme Court pointed out that all 50 States now have such limitations as does the National Labor Relations Board in its

elections and the U.S. Supreme Court stated further, quote, "In examination of the history of election regulation in this country reveals a persistent battle against two evils, voter intimidation and election fraud. After an unsuccessful experiment with an unofficial ballot system, all 50 States together with numerous other western democracies, settled on the same solution, a secret ballot, secured in part by a restrictive zone around the voting compartments.

This widespread and time tested consensus, demonstrates that some restrictive zone is necessary in order to serve the State's compelling interest in preventing voter intimidation in election fraud. The link between ballot secrecy and some restrictive zone surrounding voting area is not merely timing, it's common sense. The only way to preserve the secrecy of the ballot is to limit the access to the area around the voter." Again, a recent U.S. Supreme Court decision.

In contrast, to such a procedure, reliance upon union authorization cards, provides neither a protection against voter intimidation or against election fraud. If the true preferences of an employee at America's work places are important enough to determine, they're important enough to determine accurately.

It isn't an anomaly for employer spokespersons, such as ourselves, to be defending the right of America's workers to vote in secret on the issue of unionization. In this time of greater and greater employee involvement in decisions affecting productivity, we believe it would be a major mistake for American business to stand on the sidelines while unions and other special interest groups seek to remove from our workers the basic right to vote in secret on their work place future. We freely acknowledge that work place productivity is decreased not increased, when the will of a majority of workers to seek unionization is unlawfully impeded by the employer. We neither condone or support such action.

Conversely, however, this committee must understand that the productivity of American workers, likewise, cannot be increased if a labor union is forced upon them without their having the opportunity to exercise their fullest freedom of choice to select such representation by secret ballot.

If the goal is increased worker productivity, and we believe it is, than replacing the secret ballot with union authorization cards is not a way to get there.

The human spirit does not respond positively when the right to vote is taken away. We do hope our presentation here today, causes the committee to stop and think carefully before taking any precipitous action that might upset labor/management balance that we now have under our laws.

Those laws have served us well for over 50 years, given the causality of evidence that the changes sought by unions are necessary or even desirable, and given the evidence that union backed proposals could hurt productivity and competitiveness. We urge the committee not to legislate away the secret ballot and other freedoms the American workers now have.

I think we'd all be happy to respond to any further questions you might have.

Senator SIMON. Let me, if you do not move in the direction of Canada on the card, it does seem to me there has to be some time

constraints, that it is ridiculous. We have the one case for 7 years, this has been in the process before there is action.

Mr. BULGER. I think the Seventh Circuit called the Labor Board the Rip Van Winkle of Administrative Agencies.

Senator SIMON. Yes.

Mr. BULGER. And Jim and I and Ms. Jackson, I'm sure would agree with you that there has to be some limits. In fact, there already are limits that are very closely observed. Typically, the Labor Board has what they call time targets, in which they want for their own internal purposes to process a case. In the situation of a union election petition, let me tell you exactly how it works, because I have a recent example.

The petition was filed I believe on February 28th. The first time the employer heard about that, ironically enough, was from a union consultant who was monitoring the filings at the Labor Board, they heard about it March 4th, a Thursday. They actually got it five, six, seven, they got it March 9th. So it took almost 10 days. It took about 10 days for the petition to come in. But the time target is that the Board has to process that petition, if there's no hearing, within 50 days, to an election, so from February 28th, 50 days, whatever that counts out to. I think it's April 20th, April 21st.

The Board, and it's been my experience in a number of cases, even when the union agrees that we can go outside that 50 days, the Board will not approve that stipulation and this has been raised repeatedly by practitioners with the Labor Board, who have questioned the members about is this a target, a guideline or is it hard and fast.

In practice, it's hard and fast and it's very difficult to get around. That target is only missed if there is a hearing and even then it may not be missed because many hearings are very short and usually they're under short time frames. You file a brief in a week after the close of the hearing and the Board will decide most of these cases that day or the next day. They have a special unit here in Chicago that does nothing but write the decisions.

Mr. BAIRD. The problem is you can't allow the exception to create the rule. Much the same with a lot of our litigation and other forum, a great amount of that litigation. Let's just take arbitration. Most arbitration cases, are decided rather rapidly. That's why the system works and I'm not talking about interest arbitration, grievance arbitration. But we could cite thousands of cases, because of some particular situation that have gone off on appeal. It's taken 5 or 10 years.

But, if there's a 1,000 taking 10 years, there must be 200,000 that have been settled very quickly, very expeditiously. As our statistics show, only 15 percent of all of these cases involve any sort of hearing whatsoever. So, right away, we're talking about a small minority of the cases and of those 15, I hazard to say at least two-thirds of those are resolved, as Brian indicated, quite rapidly. So, maybe, we're talking about 5 percent of the cases and the question is will we then impact basic other, if you will, due process rights for those 5 percent.

Senator SIMON. I guess the other side of the argument is if 95 percent, assuming your statistics are accurate, are moving along

expeditiously, is there any reason that we tolerate 5 percent just dragging on endlessly?

Mr. BAIRD. Well, the nature of that, Senator, if I may, is such that you do have unique issues in some cases. You have cases of first impression, as you well know. You may have a situation where a union seeks to organize one of two banks that have branch offices across the street. Now, is that properly two units or one? That has to be resolved. We have any number of situations.

Senator SIMON. But, why shouldn't we have a time factor that says, let's resolve it in X number of days?

Mr. BAIRD. Well,—

Senator SIMON. As Canada does?

Mr. BAIRD. Yeah, you could have a time factor involved. There's no question you could. The question would be more along the lines of what time factor will take into consideration basic due process rights? Will you have a transcript or not?

You know, the delays intended upon having a transcript and you know the difficulties if you don't have a transcript. Will there be rights to brief? Most cases, yes. You put a reasonable limit on, it could be done.

Senator SIMON. And I am as one who has been a strong advocate of protecting those kinds of rights, but I don't think we ought to protect the right just to delay endlessly.

Mr. BAIRD. I don't think any one of us support that.

Senator SIMON. Let me mention another problem area and that is the first contract factor that just goes on and on. You heard about the Joliet nurses and, you know, there are any number of cases that could be cited. Is there—I know that both management and labor have historically opposed binding arbitration.

Is there any reason to say, if you can't get an agreement in 60 days, 90 days, whatever the time period, that in those cases you have binding arbitration?

Mr. BAIRD. In my opinion, Senator, for both labor and management, such an approach, and for the country, would be a disaster. I think it would be a huge, huge mistake. First of all, I think you have to look at the causes of the amount of time to negotiate a first contract. After all, a contract follows, for the most part, an organizing campaign in an election. To become elected, a number of promises have to be made.

So you have then, after the vote, a work place with very high expectations, workers with high expectations, frankly, in my opinion, that have nothing to do with the reality of a company's competitive situation or the reality of other contracts or provisions in the area.

Consequently, a great deal of time is taken because the union is a political institution, then has its meetings. It has a whole host of people come in. What do you want? Well, we all make a list.

So, they have a whole shopping list and as often as not, my union negotiators will say to me, we know this isn't reasonable. We know we can't get it but we have to go ahead for awhile until they begin to understand the process.

Senator SIMON. But, and on the other side, you have people who, on the management side, give you a whole horror story of what's going to happen if you organize. So you have this wide disparity

and it does seem to me that some kind of time factor is desirable and it encourages the two sides to get together.

You mentioned the one case, where I don't remember the date, but February 28th, something was filed, a petition was filed and March 5th was the first time the employer heard about it. My immediate instinct and I say this as someone who was an employer in the private sector and now I'm an employer in the public sector, something is wrong in labor/management relations in that particular situation, if that's the first time.

Ms. JACKSON. No communication.

Mr. BULGER. But it's not uncommon, Senator, that a union will organize employees with what's called a silent campaign or a secret campaign and that they tell people, don't let the employer know you're doing this. Now, I would certainly agree, I listened to the witness from the nurses, that some employers are resistant to dealing with employee complaints and that they are unnoticed effect that they have a dissatisfied work force.

But it is absolutely true to tell you that I've had employers in my office, stunned and for good reason, that an election petition is filed because they have not heard a word and whether or not you can challenge the communications activity there, it seems to me wrong not to give the employer a chance to tell its side of the story. That's what the balance here really is all about.

The union talked about access provisions and I think Jim and I are in agreement on this. To some extent, we don't disagree that you can provide more access to unions. I, frankly, predicted the Leachmier (phonetic) decision is the one in the shopping center and I went last January to New Orleans to the Industrial Relations Research Association and I predicted that decision would go the other way, because I thought that was the way it ought to go. I thought that would be fair to give unions the same shot as the Cub Scouts do to sell their cookies out in front.

But you have to keep in mind that they are a sales organization. And that they shouldn't be given tremendously greater position than any other sales organization. Once a petition is filed and they've got enough of the work force behind them to get that petition, I'd be willing to let them have some limited access.

Senator SIMON. Equal access.

Mr. BAIRD. The problem though—

Mr. BULGER. But not 8 hours a day, because we don't have that. We really don't.

Senator SIMON. But have equal access on both sides.

Mr. BULGER. Then we would get to go to do some things we can't do now. We could go to employees homes, which we can't do now. It's not as one sided as you think. Right now, an employer only has that eight hours and can an employer decide I'm going to throw my money away eight hours a day and do nothing but campaign against the union, instead of having my people work and make money. The answer is yes, maybe they can.

My experience is that a typical union campaign, consists of four or five letters, some handouts and maybe two speeches by the employer lasting less than an hour. It's not—I certainly don't know about that Nissan. It sounds rather interesting, but it is not an

eight hour a day, 7 day a week, type of activity and to that extent, I think we wouldn't.

Mr. BAIRD. And it was mentioned, as Brian said, if we're seriously talking about a folly, employers are prohibited from visiting homes. Unions may. The analogy was brought to the political election.

What would happen if the NLRB rules had been applied and it was interesting because what that person forgot is one key rule, Senator.

What would happen if President Bush given all that access would be, that one new rule, he'd be prohibited from ever making a promise. He can't promise that if elected, I will do this, that or the other thing for you.

Now, the NLRB election rules allow the unions to make unlimited promises. One party running for election can make all the promises possible. The other party is prohibited from making promises. Now, all the access in the world is very—it doesn't help a lot if you can't tell people, once you get the access, what you're going to do for them.

So, I think, that has to be kept in mind.

Senator SIMON. Let me shift to one final thing.

Mr. BAIRD. I would like to address the arbitration if I had a moment, after you're finished, please.

Senator SIMON. OK. Well, I am going to have to get rolling here. What we clearly need is to have labor and management working together much more than we have been. I think all sides agree on that.

Ms. JACKSON. Absolutely.

Senator SIMON. One of the things that does seem to help both on the productivity side and in terms of developing a better climate is profit sharing. What if, in our, as we reexamine our tax laws, we were to give some special tax incentive to corporations that have profit sharing?

Mr. BULGER. Well, it's interesting you mention that, Senator, because in the longer piece which we didn't inflict upon you, there is an interesting Department of Labor study with regard to work place participation programs and benefit programs including profit sharing, and they discovered that nonunion business units are far more likely to have employee oriented programs like performance appraisal programs and feedback, profit sharing, extensive benefit programs, and job enrichment and enlargement programs.

All the sort of TOM and Demming related things you see are more common in the nonunion sector. I don't know why that is.

Senator SIMON. That's evading my question, frankly.

Mr. BULGER. But the profit sharing would be fine. I don't think that's something—

Ms. JACKSON. From a tax perspective.

Mr. BAIRD. From a tax perspective, absolutely.

Senator SIMON. OK.

Mr. BAIRD. I think it would be an intriguing idea.

Ms. JACKSON. Yes.

Mr. BULGER. I think it would, though, perhaps put you in another situation and Sally talked about the fact that the legislatively mandated benefits and protection have really decreased and it's

amazing to me, you can chart the increase in individual rights going up and the union decline going down.

Senator SIMON. I don't think there's any question there's some validity to what you had to say there.

Mr. BULGER. This may be, the profit sharing might be one more example of something where the employers would be quick to adopt it but it might actually hurt unionization activity.

Senator SIMON. Let me thank you for being here and there will be legislation introduced and I'm not going to be introducing anything until October. When I do introduce it, I'm interested in getting your reaction, at that point, as well as your colleagues from other States.

Thank you.

Mr. BULGER. Thank you, Senator.

Mr. BAIRD. Thank you, Senator.

Senator SIMON. And let me just add, I wish you the very best, Sally.

Ms. JACKSON. Thank you, Senator. Thank you very much.

[The prepared statement of Ms. Jackson follows:]

PREPARED STATEMENT OF SALLY JACKSON

Good afternoon. I wish to thank the Chair and the committee for scheduling us to appear and offer the comments of the Illinois State Chamber of Commerce on the decline of unionization in the United States and the impact of that decline on global competitiveness and productivity of domestic firms. First, let us introduce ourselves. I am Sally Jackson, president and CEO of the Illinois State Chamber of Commerce. Founded in 1919, the Illinois Chamber is the State's largest broad-based business organization. We represent over 7,000 businesses in Illinois and we cooperate closely with nearly 300 local chambers of commerce across Illinois, and with the U.S. Chamber of Commerce in Washington.

With me are James Baird, a partner in the law firm of Seyfarth, Shaw, Fairweather & Geraldson, and Brian Bulger, a partner in the law firm of Katten, Muchin, and Zavis. Both Mr. Baird and Mr. Bulger have national labor and employment law practices representing management. They were instrumental in the preparation of this testimony and are here to lend their practical labor relations expertise to the Committee.

The members of my organization are vitally interested in improving productivity and competitiveness. We are here today to present their views on the issues raised by the committee on the linkage between unionization and productivity and the effects of possible changes in the organic labor law of the country upon their efforts to improve productivity.

As we understand from Chairman Simon's opening statement and from other testimony presented to the committee, a major concern of these hearings is to determine whether the undeniable decline of unionization has any adverse implications upon productivity, global competitiveness and the living standards of our people. Another goal is to focus upon the causes for the decline of unionization and, if appropriate, explore means of eliminating those causes and reversing that decline.

Not surprisingly, various union officials and adherents, supported by a few members of the academic community, emphatically state that low union membership means lowered living standards, productivity and competitiveness. They lay the blame for declining unionization at the door of management, claiming that unfair, anti-union tactics are the main source of unions' troubles. And, they suggest that the magic elixir to improve union penetration of the workforce and improve U.S. productivity is to change the labor laws to make it easier for unions to organize workers.

In response we urge caution upon the Committee. Our experience and empirical research strongly suggest that the premises, evidence and solutions presented by the proponents of the union view are wrong. Most importantly, we believe precipitous action along the lines suggested by the unions will lead, in a short period of time, to a decline in productivity and competitiveness. Allow us to present a few facts for your consideration.

In his opening statement the Chair referred to the significant decline of union membership since the 1970's and compared it to falling U.S. average weekly wages. A chart comparing hourly wages, benefits and percentage of unionization among the United States and 13 other countries also was attached to the statement. The implication, of course, is that falling rates of unionization lead to falling incomes. However, as the Chair recognized in his opening statement "[t]he causes of the decline in union membership are complex." The Chair placed principal emphasis for the decline upon resistance to union organizing activities, yet academics disagree. For example, in a thoughtful article, "Private Sector Union Decline And Structural Employment Change 1970-1988," published in 1992 in the *Journal of Labor Research*, Professor Ethel Jones of Auburn University found that the pivotal relationship in the decline in unionization is the relative shift in employment distribution away from traditionally strongly unionized industries.¹ Professor Jones noted specifically that the results of decertification elections turning union shops non-union had only "minuscule" impact on the trend of declining union representation.

Moreover, we note from the Chair's chart that only three of the 13 compared countries had both higher rates of unionization and higher wages than the United States—West Germany, Switzerland, and Sweden. Eight of those countries had higher rates of unionization but they also had lower hourly compensation. In Brazil, for example, where 50 percent of the workforce is unionized, hourly compensation averages \$1.49.

The simple fact is that no causal nexus or connection can be shown between declining unionization and declining living standards. Indeed, by using the Chair's figures a strong case can be made that an increase in unionization leads to a decline in compensation. Such an analysis could also be flawed, however, because the cause and effect relationship between unionization and wages is just not clear or provable.

A better approach, we believe, is to look at productivity. On March 10, 1993 the Associated Press reported that Labor Department statistics showed that 1992's productivity gain was the largest in two decades. Productivity rose 2.8 percent last year, the best improvement since a 3.1 percent improvement in 1972.2 Perhaps not coincidentally, 1992 was the year in which unions hit their lowest percentage of representation since about the passage of the Wagner Act. Of course, some may argue that the productivity gain is unrelated to the union decline, but the figures suggest that caution is called for before the Congress makes changes which may reverse union declines but which also could reverse productivity gains.

The anecdotal experience of our members also suggests that productivity gains are best achieved in a non-union setting. Motorola, headquartered in Illinois and recognized as a world-class competitor in the electronics industry, is predominantly a union-free company. In the last few years Motorola tells us that its productivity has increased 100 percent. During that same time frame Motorola also won the Baldrige Award, along with many others, for the quality of its products. Motorola also has won awards from, among others, the Department of Labor for its commitment to affirmative action and diversity.

As noted Motorola has achieved this standing while being mostly union-free. Motorola's experience and that of many of our other members indicate that significant productivity and diversity gains are made in the absence of unions. As to diversity, the Chair recognized in his opening statement that unions often failed to involve women and minorities. Indeed here in Chicago the papers have been full of the Police Union's efforts to block an affirmative action clause which the City of Chicago proposed for its collective bargaining agreement. Old habits die hard, and we do not believe that any meaningful evidence exists to show that unions will help to improve productivity or diversity in the American workforce. In fact, we believe that unionization hinders productivity and diversity.

One final point on productivity involves a comparison between ourselves and our major trading partners. In "America and the New Economy," published by the American Society for Training and Development and the Department of Labor,³ a 1989 comparison showed American productivity as greater than that of 13 other nations, including Canada, Japan, and West Germany⁴ (Appendix A). All of these countries, save Korea, are more heavily unionized than we, yet none of them has yet matched our productivity. While it is true that these countries have increased productivity faster than we in recent years, this is not surprising because they started from far lower baselines than the United States. As the study concludes, "even a small acceleration [in productivity] will make us all the more difficult to catch. Indeed, should our rate of increase in productivity continue to improve, our competitors will be hard pressed to catch up, given our current lead in the race."⁵ Once again, these productivity figures suggest that the Congress must carefully weigh the negative impact which legislatively-mandated structural changes to our workforce could have.

Having examined the lack of any relationship between high rates of unionization and high productivity, competitiveness or living standards for a country, we turn now to the causes of the decline in unionization. It is not the case, as believed by some union adherents, that the United States is unique in declining unionization. Professor Leo Troy of Rutgers University has determined that unionization in the private sectors of Canada and Western Europe has also declined. Professor Troy, like Professor Jones, traces the decline to structural changes in the labor market.⁶

The unions trace their decline to unfair, anti-union management tactics and laws. In particular, prior witnesses focused on what they considered pervasive delays instituted by management to allow time to attack or intimidate union supporters as the major roadblock to union organizing. We note that, for many years, union "win" rates in NLRB elections have been within 5 percentage points, one way or the other, of 50 percent. In 1992, the union win rate began to increase after several years of stable or falling rates. This suggests that no real change is appropriate or necessary. Rather than blaming management or the NLRB, perhaps the unions should look inward, because it is obvious that many unions can and do win elections. To paraphrase Shakespeare, "The fault, Senators, lies not in the unions' stars or the labor laws, but in themselves."

Empirical evidence does not support the view of pervasive management delays in organizing. Indeed, in some respects the evidence shows that management is less likely to delay an NLRB election in the 1990's as compared to the 1970's. In the prior session union witnesses, such as Roger Runyon, Ucemze Kernizan, Gary Chaison and Joseph Rose, Richard Hurd, and others, pointed to the NLRB processes as a major factor in union defeats. They note that the first move by an anti-union management is to appeal or contest the scope of the bargaining unit set in the union petition for an NLRB election. This, the witnesses contend, allows management to delay the election while it engages in a union-free strategy or intimidation of workers. The proponents of this theory offer only anecdotes and no empirical or statistical evidence. We have such evidence, and it highlights the errors of the prior testimony.

First, for the committee's understanding, let us describe the NLRB election process. Once a properly-supported election petition is presented to the NLRB, it sends the petition to the employer and schedules a hearing date. The employer may elect to contest certain details of the petition, such as challenging the description of the bargaining unit, in which case a hearing is held. If the employer, NLRB and the union agree on election details, no hearing is held, but a "stipulation" is entered memorializing the agreement on the election. It is true that a hearing may delay the process, although in many cases a hearing is opened but closed quickly when the parties resolve any disagreement. In the case of a stipulation, the NLRB will not, except in unusual circumstances, schedule the election more than 50 days after the date the petition was received. Our members tell us it is very difficult to extend that 50 day period.

Following an election either party may file "objections" to the conduct of the election or to conduct (such as threats) affecting the election. Challenges to a particular voter also may be filed. The Board initially determines whether there is enough merit to objections or challenges to warrant a hearing, and in many cases objections or challenges are withdrawn or no hearing is held. A hearing on objections or challenges will delay certification, but remember that not all objections or challenges merit a hearing, in which case only a few days' delay occurs.

Appendix B is a chart compiled from figures contained in the official NLRB Annual Reports from 1975 to 1990. This chart shows that in 1975 only 67.6 percent of the NLRB representation elections were held pursuant to a stipulation. Hearings were required in 20.6 percent of the cases. In other words, in 1975 only about one in every five representation cases involved the potential for management delay testified to by the union witnesses. If the thesis of those witnesses arguing management delay as the cause of union decline is correct, one would expect to see more hearings and fewer stipulations through the 1980's. Yet, just the opposite is true! From 1975 to 1990 the number of hearings steadily declined. The 1990 figures show that 82.8 percent of elections were conducted by stipulation, while only 15.7 percent involved a hearing.

Thus, by 1990 less than one in every six election petitions resulted in a hearing. Clearly, these figures demonstrate that there is no "pervasive" management practice of delay by utilizing NLRB processes to challenge election petitions.

What about at the other end of the process, has the rate of objections and challenges increased? If the union witnesses are correct, you would expect to see a dramatic increase in the rates of objections and challenges, as part of a management delay strategy. Unfortunately for the union supporters, the statistics do not support them.

Appendix C, again prepared from the NLRB Annual Reports, charts the numbers and percentages of election challenges and objections. The chart shows that, over the years from 1975 to 1990, the rates have remained fairly steady. In 1975 11.5 percent of the elections resulted in objections and 5.1 percent resulted in challenges. In 1990 the figures were 12.1 percent objections and 3.3 percent challenges. We should point out that these figures include the cases in which both challenges and objections were filed, and do not list whether the union or the employer filed the objections/challenges. But if all the objections/challenges were filed by employers and if all resulted in hearings, only 15.4 percent of the elections were affected. Once again, the available statistical evidence fails to support the union theory of massive employer delays assisted by NLRB processes.

As already noted, many academics believe the major reason for union decline is the decline in traditionally heavily unionized industries. This is a decline which unions, at the least, have been unable to stem. At the most, it could be argued that these industries have declined precisely because they are heavily unionized. In any event, the auto, steel and textile industries, among others, demonstrate that a high rate of unionization does little or nothing to provide job security to workers.

Over the last year of available NLRB statistics, more than 118,000 American workers voted in over 2,900 NLRB-conducted elections. While this number is impressive, it is a decline from the more than 257,000 workers who voted in over 5,200 NLRB elections a short 10 years earlier.

A look at NLRB election statistics is illustrative. For purposes of examination, we have provided for the committee election data comparing a 12-month period (1981-82) with a similar period 10 years later (Appendix D). What this data indicates is that the percentage of union election victories has increased, but the raw number of union elections has decreased by a full 25 percent!

Quite simply, in the vernacular which the business community utilizes so frequently, you have to invest money to make money. In the unions' case, over the past 10 years they have not spent the time, effort and manpower investing in organizing campaigns in order to grow. Instead, they are here seeking the quick answer politically, to increase their numbers of union dues payers through legislative action rather than hard work and improvement of the product.

Other statistics also demonstrate that a major factor in union decline is not management but the unions themselves. The Bureau of National Affairs opined that during the period 1973 to 1988, 44 percent of the drop in unionization was attributable to the reduction in the size of union establishments, 43 percent to the growth of the non-union sector, and 13 percent was due to a decline in union organizing.⁷ This last figure, the decline of union organizing activity, deserves further exploration. The fact is that union organizing expenditures have declined by over 30 percent per non-union worker.⁸ A 1988 study done by the Department of Labor's Bureau of Labor-Management Relations also found that union business units are less likely than nonunion units to embrace job enrichment, enlargement and analysis programs, maintain performance appraisal and feedback reviews, and otherwise provide modern employee-oriented analysis and benefit programs.⁹ These failures may also explain the decline of union-represented sectors and businesses, as these types of programs are generally viewed as desirable from standpoints of employee satisfaction, productivity and competitiveness.

Another factor in unions' decline has been their very success. The United States now has legislated an extensive system of job benefits and protections—the Fair Labor Standards Act, the Civil Rights Acts of 1964 and 1991, the Age Discrimination in Employment Act, the Family and Medical Leave Act—to name but a few. These laws and their counterparts in every state have, to a large extent, usurped the traditional role of labor unions. Why should an employee pay dues to a union for job protection when it is clear that unions have not been able to provide job security in heavily unionized industries and when government agencies will investigate a worker's employment problems without charge? The answer many employees are giving, by declining union representation, is that they do not need unions.

Appendix E provides a graphic example of this phenomenon. It consists of a chart, prepared at the U.S. Equal Employment Opportunity Commission, analyzing the types of charges filed with the Commission under the Americans With Disabilities

Act since it became effective in July 1992. Almost half of the charges pertain to discharge. Other charges challenge decisions on harassment, discipline, benefits, promotions, layoffs and hiring. We understand that the chart would be similar if other types of discrimination charges were analyzed. The point of this chart is that it demonstrates that the EEOC is being used to resolve employee grievances, just as do collectively-bargained grievance procedures. Grievance processing is the main day-to-day interaction between unions and employees. But if employees can turn to government agencies for such assistance, as they can, the need for unions declines dramatically, as it apparently has when one looks at the figures.

The fact is that our country's concern and protection of individual rights has greatly lowered the need for protecting individuals through collective action, and these protections themselves are another major factor in the decline of unionization.

In short, the predicates upon which union supporters base their requests for changes in the labor law—an improved competitive position and elimination of employer manipulation of NLRB processes—do not exist and are contradicted by the available empirical evidence. Moreover, overwhelming evidence exists that the major factors in the decline of unions are structural changes in the economy, unions' lack of organizing and diversity, resistance to change and the widespread legislative protection of employees. Nevertheless, let us examine the solutions proposed by the union supporters to the non-existent problems they posit. Those solutions primarily are to make union organizing easier by requiring bargaining based only on an authorization card check, establishing European-style works councils and expediting NLRB elections.

We must point out at the outset that the union proposals would overturn NLRB election law which has been virtually unchanged since 1935 and which has provided great stability. More importantly these proposals are antithetical to the very bedrocks of American democracy—the secret ballot and an informed electorate.

The greatest protection which a worker has against discrimination or intimidation in a union organizing campaign is the secret ballot. Neither the employer, nor the union, nor their supporters know how the employees vote. The prospect for a free choice unhampered by intimidation or retaliation is precisely why we elect our public officers by secret ballot. It is also the reason why anti-democratic regimes abhor the secret ballot or insist upon single-party elections. It is an extremely grave step for the Committee to even consider departing from the secret ballot concept.

Try, for a moment, to take a step back from partisan political currents and look at a somewhat bigger picture. Look for a moment to the basic rights, responsibilities and needs of America's workers everywhere. These workers now have the right to vote, by secret ballot, for their local, State and Federal political officials, including their senators and congressional representatives.

They also have the protections of workplace democracy. That is, they now have the right to vote, in secret, whether or not they want collective bargaining and union representation at their workplace. It would, in our opinion, be a very serious and sinister step, indeed, if this most basic of American rights were to be removed from today's American worker.

What kind of a message will the Congress be sending to today's employees? That you can't be trusted to hear two sides of an issue and then vote in secret? Or, that you are not important enough, anymore, to have the right to vote in secret on your workplace destiny?

Oh, we can understand why certain unions do not like the secret ballot process and would like to have this process eliminated at the workplace. After all, if you are a labor union, it has to be terribly tempting to replace the system where you gain election something less than one-half of the time for a new system where you can prevail far more often.

If, in the marketplace of ideas, today's American workers—who are more educated and independent than their predecessors—vote against union representation more than half the time, there are seemingly two logical paths which the union movement can follow. Like a losing politician or an incumbent who has barely prevailed, they can work to improve their product, improve their service, improve their image and improve their neighborhood in order to appeal to more voters the next time around. Or, they can simply try to get the rules changed to eliminate the need for a secret ballot in the first place.

Historically, in our country we have encouraged those who want to do better in elections to improve themselves, and we have discouraged changing the electoral rules in mid-stream. In our view, America's workers should not now be deprived of their important rights to vote and this Committee should not be party to such shenanigans.

We all know that the union card-check process is riddled with flaws. At its most basic, how many of us have bought cookies or raffle tickets at work, home or the

store when we did not really want to, but were afraid of offending a co-worker or neighbor? Virtually all of us have been placed in this situation, and we have succumbed. Can you imagine how much greater the pressure is to sign a union card? The only way that employees can be assured of a truly free choice with respect to unionization is by use of a secret ballot.

Back in 1969, in the lead case of *National Labor Relations Board v. Gissel Packing Company*, the United States Supreme Court, at that time called the "Warren Court," held that a majority of union authorization cards could support an order to bargain with an employer where the employer's conduct made a fair election impossible.¹⁰ We have no quarrel with that decision. However, even in that case, the Supreme Court acknowledged a basic truism, that to grant union recognition by virtue of union authorization cards is " . . . admittedly inferior to the election process . . .

"¹¹ A number of courts and commentators have agreed with this basic truism. The Fourth Circuit Court of Appeals has observed in *NLRB v. S.S. Logan Packing Company*:

It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a "card check," unless it was an employer's request for an open show of hands. The one is no more reliable than the other.¹²

In that same case, the Court of Appeals pointed out that as long ago as 1962, then-NLRB Chairman McCulloch presented to the American Bar Association data indicating that there exists a very strong relationship between union card signing majorities and union election results. There, it was pointed out by Chairman McCulloch, a democratic appointee, that unions which presented authorization cards from 30-50 percent of the employees won only 19 percent of the elections; those having authorization cards from 50-70 percent of the employees won only 48 percent of the elections; while those having authorization cards from over 70 percent of the employees won 74 percent of the elections.

We have had numerous examples right here in Illinois of the unreliability of union authorization cards. In our emerging riverboat gambling industry, testimony was recently given in an NLRB case involving two unions contesting for the right to represent employees. At that hearing, witness after witness testified under oath that they did not know what they were signing when they signed union cards. One employee stated:

Answer. They [the union] passed out the cards. They said sign these cards. When you turn them in, you will get a hat and pin, and whatever it is that they gave us.

Question. And you read it, didn't you?

Answer. Right, I read the card.

Question. Is it your testimony you signed a card because you were going to get a hat and a pin?

Answer. No. I mean, I just signed a card because everybody else was there signing the cards and we were under the impression we already had a union.

Another employee stated that one of her fellow employees convinced her to sign a card, as follows:

She came up to us and said that she had just met with the [union] and just had lunch with them. And she handed us a blue card and said that if we signed it that we were not obligated to this union, that literally we were only signing it to allow the union to come in and talk to us to see if we would want them to represent us, but that we were not obligated in any way.

Finally, when another employee was asked whether a union representative told him he was required to sign a card, the employee answered as follows:

No. They were passed around. Nobody really had ever been in a union before. We didn't know what we were getting ourselves into and, like they told us, that we didn't think they meant anything, so what did we have to worry about.

As we all know, when someone is looking over our shoulder, whispering in our ear or otherwise crowding us when we are registering our preference, we are hardly involved in a situation where we can exercise unfettered free choice. Almost three decades ago, the National Labor Relations Board recognized the corrosive effect of conversations between principals to the election and employees just preparing to cast their secret ballot vote. In the 1960's, in *Milchem, Inc.*, the NLRB announced one of its most sensible rules; that is, that neither side to the election could exert undue, last-minute influence over a voting employee prior to the employee's expressing his preference on the issue of unionization.¹³ While we would normally abhor an extended quotation, we include such quotation in our testimony here because of the import of the words uttered:

Careful consideration of the problem now convinces us that the potential for distraction, last minute electioneering or pressure, and unfair advantage from prolonged conversations between representatives of any party to the election and voters

3 9999 05982 585 9

waiting to cast ballots is of sufficient concern to warrant a strict rule against such conduct, without inquiry into the nature of the conversations. The final minutes before an employee casts his vote should be his own, as free from interference as possible. Furthermore, the standard here applied insures that no party gains a last-minute advantage over the other, and at the same time deprives neither party of any important access to the ear of the voter.¹⁴

Significantly, the United States Supreme Court recently cited this NLRB rule with approval in an important political election case. This case involved a constitutional challenge to the State of Tennessee's practice of prohibiting solicitation of voters, and displays of campaign materials, within 100 feet of the entrance of a polling place.

In upholding the State of Tennessee's rule prohibiting access to areas in and around polling places in the face of a First Amendment free speech challenge, in *Burson v. Freeman*, the Supreme Court pointed out that all 50 States now have such limitations as does the National Labor Relations Board in its elections.¹⁵ After reviewing the reasons for such a rule, the Supreme Court stated, in words this committee may want to carefully heed:

[An] examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud. After an unsuccessful experiment with an unofficial ballot system, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restrictive zone around the voting compartments.... [T]his wide-spread and time-tested consensus demonstrates that some restrictive zone is necessary in order to serve the States' compelling interest in preventing voter intimidation and election fraud. [T]he link between ballot secrecy and some restrictive zone surrounding the voting area is not merely timing—it is common sense. The only way to preserve the secrecy of the ballot is to limit access to the area around the voter.¹⁶

In contrast to such a procedure, reliance upon union authorization cards provides neither a protection against voter intimidation or against election fraud. If the true preferences of an employee at America's workplaces are important enough to determine, they are important enough to determine accurately. The only way that can be done is by use of the secret ballot—a process which is free of the dual evils of voter intimidation and election fraud.

One other point which should be considered is that recognizing unions based upon a card-check or an expedited election places far too much control of timing in the hands of unions. Many union organizing campaigns are secret or "silent" campaigns, in which the first inking an employer may have of union organizing comes after an election petition is filed. If this occurs, and an election or recognition based on card-check swiftly follows, the employer has no chance to tell its side of the story and employees may only hear one-sided union promises. An informed decision can only be made if both sides of the story are heard. Employees must be permitted a reasonable opportunity to learn the views of management and to hear that there is another side of the union story. Anything less deprives employees of informed choice and harks back to regimes where elections are a one-sided, one-party affair, so the voters there really do not "need" to have an opportunity to evaluate contradictory campaign information. Such an approach would be un-American and un-democratic. It should not be countenanced by the committee.

It is not an anomaly for employer spokespersons such as ourselves to be defending the right of America's workers to vote in secret on the issue of unionization. In this age of greater and greater employee involvement, we believe it would be a major mistake for American business to stand on the sidelines while unions and other special interest groups seek to remove from our workers the basic right to vote in secret on their workplace future.

We freely acknowledge that workplace productivity is decreased, not increased, when the will of a majority of workers to seek unionization is unlawfully impeded by their employer. We neither condone nor support such action. Conversely, however, this committee must understand that the productivity of American workers likewise cannot be increased if a labor union is foisted upon them without their having the opportunity to exercise their fullest freedom of choice to select such representation by the secret ballot. If the goal is increased worker productivity, then replacing the secret ballot with union authorization cards is not a way to get there. The human spirit does not respond positively when the right to vote is taken away.

We hope that our presentation today causes the committee to stop and think carefully before taking precipitous action to upset the labor-management balance we now have under our laws. Those laws have served us well for over 50 years. Given the paucity of evidence that the changes sought by unions are necessary, or even desirable, and given the evidence that the union-backed proposals could hurt pro-

ductivity and competitiveness, we urge the Committee not to legislate away the secret ballot and other labor freedoms of the American worker.

1. "Private Sector Union Decline and Structural Employment Change 1970-1988," *J. Labor Research*, Vol. XIII, No. 3, p. 257(1992).
2. *The Denver Post*, March 10, 1993 p. 3c.
3. "America and the New Economy," American Society for Training and Development and U.S. Department of Labor.
4. *Id.* 25. Canada, Norway, Sweden, Japan, Germany, France, Denmark, United Kingdom, Belgium, Italy, Netherlands, Austria, and Korea.
5. *Id.* 25-26.
16. Troy, "Is the U.S. Unique in the Decline of Private Sector Unionism," *J. Labor Research*, Vol XI, No. 2, p. 111(1990).
7. "Union Coverage Predicted to Fall Below 5 Percent by 2000," *Daily Labor Report (BNA)* No. 241, December 18, 1989 (A-I).
8. *Id.*
9. "Human Resource Policies and Practices in American Firms," U.S. Department of Labor, Bureau of Labor Management Relations and Cooperative Programs, 1988 pp. 33-40.
10. *NLRB v. Gissel Packing Co.*, 895. Ct. 1918(1969).
11. *Id.* at 1934.
12. *NLRB v. 5.5. Logan Packing Company*, 385 F.2d 562,565 (Fourth Cir. 1967).
13. *Milchem. Inc.*, 170 NLRB 362(1968).
14. *Id.*
15. *Burson v. Freeman*, 1125. Ct. 1846(1992).
16. *Id.* 1855-56.

Senator SIMON. The hearing stands adjourned.

[Whereupon, at 12:40 p.m., the subcommittee adjourned.]

